



the global voice of
the legal profession®

Lex:lead Group annual scholarship competition **2015**

Published by the International Bar Association on behalf of the IBA Foundation





2015

Lex:Lead Group annual scholarship competitor

3

IBA Foundation

3

Lex:lead 2015 annual scholarship winning articles

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Sara Kiflemariam Abraham

4

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Moses Baguma

7

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Tsidkenu Paul Moono

10

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Ivan Allan Ojakol

13

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Nsofwa Puta

16

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Ftsun Sbhatu Tewolde

20

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Negese Tujuba Erba

24

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Binita Pandey

27

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Tsebaot Getahun Kiflu

30

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Merga Fikadu Angerasa

34

International Bar Association

4th Floor, 10 St Bride Street

London EC4A 4AD

Tel: +44 (0)20 7842 0090

Fax: +44 (0)20 7842 0091

www.ibanet.org

© International Bar Association 2015.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without the prior permission of the copyright holder. Application for permission should be made to the Director of Content at the IBA address.

The views expressed are not necessarily those of the International Bar Association.

Please direct any queries to:

Anne Bodley

Publications Editor, IBA Foundation, London

annebodley@yahoo.com

Lex:lead Group annual scholarship competition: summary

The following articles were winning submissions in the 2015 Lex:Lead Group annual scholarship competition. Winners were decided by a panel of international judges, lawyers and academics, judged independently. Awards are funded by a grant to the Lex:lead Group from the International Bar Association Foundation. For more information, please visit www.lex-lead.org.

These essays were first published in May 2017 in the American Bar Association's (ABA) *Africa Law Today Newsletter* (Beverly Nwanna, Editor) and are reprinted with permission from the ABA Africa Committee unless stated otherwise. The original newsletter can be accessed at www.americanbar.org/aba.html.

IBA Foundation

The International Bar Association Foundation is a United States-based charitable foundation, established in 1986 by members of the IBA to engage in educational and charitable activities related to advancing the rule of law.

While the Foundation has worked closely with the IBA over the last 30 years, it has operated as a separate and independent entity with a historical mandate that has allowed it

to support a broad range of rule-of-law-related undertakings.

To find out more about the IBA Foundation, visit www.ibanet.org/About_the_IBA/IBA-foundation-inc.aspx. On our webpage, you will find information about the Foundation, its mission, its officers and trustees, and some of the activities it has recently funded.

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Sara Kiflemariam Abraham

Adi Keih College,
Asmara

kiflemariamsara@gmail.com

Not published

Introduction

This essay deals with how poor economic development is connected to health-related concerns and the intervention of law to control these concerns in order to ultimately improve the lives of human beings. To attain its designed purpose, the essay will firstly try to clarify the concepts of poor economic development and health-related concerns. Secondly, the essay will address the relationship that exists between poor economic development and health related concerns and finally it will try to see the role of law in improving and fostering the quality of life through the effective control of health-related concerns. At last, a conclusion will be provided.

It makes sense that poverty rates are related to the overall health of the economy. In fact, as the economy grows, so do opportunities for employment and income. Stronger labour markets and higher income levels tend to help those families living in poverty move above the poverty threshold.¹ Therefore, it's appropriate to firstly understand the concept of poverty. Poverty is a multidimensional and cross-sectoral phenomenon. To facilitate a comparative analysis of the different poverty profiles across the world, a standard definition of poverty, based on daily consumption, has been adopted. This definition considers as 'poor' anyone who cannot afford a daily consumption of US\$1.² Poverty, by its nature, either directly or indirectly affects negatively the economic development. Poor economic development mainly results from high unemployment rate which generates low income and low productivity.

Health means everyone achieving his or her potential to enjoy complete physical, mental and social wellbeing. Health can also

be defined as a personal, social and economic good. A healthy population is essential to allow people to live their lives to their full potential, to create the right environment to sustain jobs, to help restore the economy and to look after the most vulnerable people in society. A healthy population is a major asset for society and improving the health and wellbeing of the nation is a priority for the government and the whole society. This means that all sectors of society and the whole government need to be proactively involved in improving the health and wellbeing of the population.³ Health concern is a health-related matter that is of interest, importance or worry to someone, who may be the patient, patient's family or patient's healthcare provider. The health-related matter is of sufficient interest/importance that someone in the health care environment (patient, family, provider) has identified it as requiring some attention and perhaps tracking. A health concern may be identified from different perspectives:

- patient;
- family member/carer; or
- providers (physician, surgeon, physical therapist, respiratory therapist, nutritionist, health educator, social worker, etc).⁴

For instance, child deaths, maternal mortality and the spread of HIV/AIDS, malaria and tuberculosis are some of the health-related concerns. When a person experiences health problems, suffers illness or has a disability, the loss of health and wellbeing affects every part of his or her life and those around him/her. Similarly, adverse trends in the health of the community and the population impact on the whole of society.⁵ Developing countries face much of these health-related concerns because of the absence of many determinants of health and wellbeing such

as nutrients, environment (a healthy and safe living environment) etc. In fact, a recent World Health Report 2003, has come to emphasise the magnitude of the work to be done: the gap in life expectancies between rich and poor countries is widening. A baby born today in Japan can expect to live for 82 years, with 92 per cent of that time in good health. In Sierra Leone, however, average life expectancy at birth is a mere 34 years, more than five of those years (16 per cent) spent in ill health.⁶ This clearly shows that in the least developed countries, that is, in the countries with poor economic development, health of individuals is precarious, hence health-related concerns are comparatively high in developing countries rather than in developed ones.

The relationship between poor economic development and health-related concerns

'The children sometimes get sick for no reason. Sometimes it is because of lack of food. We are poor. We have no money to buy or to feed ourselves...'

A woman, *Voluntad de Dios*, Ecuador⁷

Malnutrition is both a major cause and effect, and a key indicator, of economic poverty and lack of development. Malnutrition and food insecurity have strong implications for health concerns. Hunger and malnutrition increase vulnerability to disease and premature death, and reduce people's ability to earn a livelihood and generate income; and this gives rise to lower productivity and lower wages. In a nutshell, the link between poor economic development and health concerns is very clear. Low incomes lead to low consumption which in turn result in low saving and low lending. This leads to low investment and thus no development.

This concept was brilliantly illustrated by the landmark report of the World Health Organization Commission of Macroeconomics and Health, which demonstrated that the disease burden or health concern attributable to three diseases (malaria, tuberculosis and HIV/AIDS) annually reduces GDP growth by as much as 1.3 per cent.⁸

Conversely, good health may be justified on purely economic grounds. Good health raises human capital levels and therefore the economic productivity of individuals and a country's economic growth rate. Better health increases workforce productivity by

reducing incapacity, debility and the number of days lost to sick leave, and reduces the opportunities an individual has of obtaining better paid work. Further, good health helps to forge improved levels of education by increasing levels of schooling and scholastic performance.⁹

Role of law in improving and fostering the quality of life through effective control of health-related concerns

The nations of the world have agreed that enjoying the highest attainable standard of health is one of the fundamental rights of every human being, without distinction of race, religion, political views, economic or social condition. Beyond its intrinsic value to individuals, health is also central to overall human development and to the reduction of poverty.¹⁰ That is why health should be placed at the center of legislation process. Legislation is and will continue to be an important tool and driver in facilitating improvements in the health achievements of the twentieth century, such as control of tobacco products, improvements in road safety, improvements in food, safety, water sanitation, housing and air quality, and the control of infectious diseases, have been achieved with the support of law.¹¹

Law can effectively control health-related concerns through various ways. Laws should particularly aim at controlling the governance and workforce of health systems, the accountability mechanisms and the accessibility to health systems.

Effective health and wellbeing improvements call for new ways of working. A competent, skilled and multi-disciplinary governance and workforce is, for instance, the most important resource for delivering health and wellbeing services.

The principle of accountability and openness requires the formulation of public health policies and laws be open to everybody. The active involvement of communities can be an effective tool for improving performance and strengthening links with health services in remote districts and can contribute to an overall improvement in governance. Therefore, laws and guidelines should play an important role in involving communities and civil society organisations who can also contribute in increasing advocacy on behalf of poor people, who do not have easy or regular access to legal or other formal means of redress. In Zimbabwe, for example, a strong alliance of civil society

stakeholders from trade unions, non-governmental organisations and informal associations has been involved in monitoring laws and policies and expenditures across the health sector. Ensuring financial, professional and organisational accountability will result in better quality, efficient and cost-effective public health policy-making and will also bolster public trust. Moreover, law should ensure that there's openness on the accessibility of information relating, for instance, to the performance of providers and on purchasing of health goods and services; and helping poor people to make choices about health services. This could come, for example, through the mandatory and clear posting of prices at facilities; the dissemination of simple and clear information on the quality of local providers; and information campaigns on safe use of drugs and on distinguishing counterfeit or out-of-date supplies.¹² The disclosure of information can also reform health systems to emphasise on preventive approaches rather than curative measures.

Ensuring that the poor have access to effective and affordable health services should also be a central issue that must be addressed efficiently by law. Since in most states constitutions, including in the International Convention on Economic, Social and Cultural Rights (ICESCR), the right to the highest attainable standard of physical and mental health is recognised, an effective way of implementing the law must be designed. At the national level, because health is determined by a wide range of factors, including income, educational level, food security and access to water and sanitation, and the Ministry of Health shouldn't be the sole guarantor of effective implementation of the law with regard to accessibility of the poor to health services. Law implementation dialogue must extend to involve other ministries (primarily those dealing with water, sanitation, nutrition and transport). At the international level, the implementation of international conventions with regard to health concerns and issues should be highlighted. For instance, the ICESCR protects the right to the highest attainable standard of physical and mental health and this directly relates to a state's economic strength and institutional capacity. The implementation is problematic due to the complexity of defining the minimum acceptable standard; that is, what is adequate and acceptable vary among countries

and groups within countries. Since state parties have different economic, cultural and social standards, it was not possible to formulate consistent indicators of progressive realisation. For example, the covenant states the right to work, right to medical care, and right to education. These rights, when being implemented, are directly related to the economic resource of any state party. This implies that the Economic, Social and Cultural Committee is supposed to devise a mechanism and value the incremental changes as to the quality of life of different societal groups.¹³ It should formulate laws designed to translate abstract legal norms into minimum standards to be followed by state parties. Through this, poverty focus is strengthened, responding better to the needs of the poorest and most vulnerable members of a society with regard to accessibility to health services.

Last but not least, laws should be legislated to address the financing mechanisms. The objective of health financing should be to assure the availability of funding, as well as to set the right incentives for providers, and to ensure that all individuals have access to effective public health and personal healthcare. Some increases in government spending for health are possible through laws that enable budget reallocation, efficiency savings and the use of funds released from debt relief.¹⁴

In a nutshell, outside the health sector, law must be designed to develop and maintain a strong advocacy platform and to provide orientations on how other sectors (education, agriculture, transport, housing, sanitation, water and environment) should incorporate health considerations into laws and practices to improve health concerns. Within the health system, law should control governance, the workforce and the openness and accountability systems. This should reform the health system away from an overly curative approach to a more preventive pattern of health interventions through imparting to the public basic information. Lastly, at the implementation level, law must be discussed with other sectors focusing on the implementation strategy and internationally the ICESCR, for instance, should formulate laws applicable to each country member on the minimum standard that a state can provide in alleviating health concerns, taking into consideration its economic, social and cultural development.

Conclusion

The creation of healthy generations of children, who can enjoy their lives to the full and reach their full potential as they develop into adults, is critical to a country's future. A healthy society and workforce benefits all sectors; one nation's economic recovery will be defined as much by the health and wellbeing profile of the population as by the core economic trends or growth.¹⁵ Through law, it's possible to alleviate health concerns that will contribute to the improvement of the quality of life and to the increase of productivity in the economy of a nation.

The sponsor supporting Sara Kiflemariam Abraham's award is Allen & Overy (www.allenoverly.com)

Notes

- 1 The connection between poverty and economy, available at www.minneapolisfed.org/publications/fedgazette/the-connection-between-poverty-and-the-economy accessed 27 December 2015.
- 2 Poverty and Health: A strategy for the African region, available at www.who.int/hdp/strategy_en.pdf accessed 25 December 2015.
- 3 Hi Healthy Ireland, a framework for improved health and wellbeing 2013-2025, available at www.hse.ie/eng/services/publications/corporate/hieng.pdf accessed 25 December 2015.
- 4 Health concern and related concerns, available at http://wiki.hl7.org/index.php?title=Health_Concern accessed 27 December 2015.
- 5 See n 3 above.
- 6 'Health and Economic Growth: Findings and Policy Implications', available at www.upf.edu/pdi/cres/lopez_casasnovas/_pdf/health_economic.pdf accessed 25 December 2015; 7 Dying for change, Poor people's experience of health and ill-health, available at www.who.int/hdp/publications/dying_change.pdf accessed 25 December 2015.
- 8 See n 2 above.
- 9 See n 6 above.
- 10 Poverty and Health, DAC Guidelines and Reference Documents available at www.oecd.org/dac/povertyreduction/33965811.pdf accessed 25 December 2015.
- 11 See n 3 above.
- 12 See n 10 above.
- 13 Sileshi Zeyohannes, *Constitutional Law II*, teaching material, 2009, pp 235, 236.
- 14 See n 10 above.
- 15 See n 3 above.

Moses Baguma

Makerere University,
Kampala
mbaguma94@gmail.com

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Economic development may be understood as an increase in the standard of living, improvement in self-esteem needs and freedom from oppression, as well as a greater choice.¹ Generally, it encompasses changes in the standard of living for the country's citizens.

Poor economic development would therefore refer to a decrease in standard of living in a given country. This contributes to health-related concerns in various ways, as illustrated below using Uganda as a case in point, whose healthcare performance is one of the worst in the world according to the

World Health Organization, ranking 186 out of 191 nations.²

Uganda lacks the requisite number of medical expertise. The state cannot afford to have medical personnel deployed to all parts of the country, rural or urban. In most cases, when there is an epidemic, doctors have to move from Kampala to various rural areas to handle such epidemics.³ The shortage in the number of health workers could be owing to the increased rates of brain drain in the health sector.⁴ Since they are not paid enough, health workers seek greener pastures outside the country to avail to themselves

of a better standard of living. What's more, the government encourages doctors and nurses from public hospitals to work abroad.⁵ Consequently, most hospitals are below par, leaving the people with limited access to quality and effective healthcare services.

Uganda's poor economy does not permit it to have the advanced medical technology to provide satisfactory healthcare services. Only the rich can afford access to hospitals abroad, which are furnished with more advanced medical technology.⁶ Furthermore, public hospitals are considered inefficient in providing healthcare services; for instance, they do not have enough medicines and it is believed that private hospitals provide better services.⁷ This is a challenge in the health sector since the poor cannot have the benefit of quality healthcare services. Statistics show that 51 per cent of Ugandans do not have any contact with public healthcare facilities.⁸

Furthermore, some people in Uganda are unaware of their rights in regards to health, especially in rural areas. This is due to, inter alia, low literacy levels, which is one of the indicators of poor economic development. Only about 73 per cent of Ugandans can read and write.⁹ It follows that the 27 per cent who cannot read and write do not know what remedies are available for them in the face of violations of their rights in relation to health. This encourages health workers to act wantonly and with impunity, hence poor delivery of health services in the country.

An illustration of wanton conduct by medical workers could be drawn from the *CEHURD v Nakaseke District Local Administration* case, in which a pregnant woman died in a hospital while awaiting obstetric care.¹⁰ A nurse who had confirmed signs of obstructed labour called the doctor on duty, who did not arrive until the woman had been in labour for about eight hours. She later died of a hemorrhage and ruptured uterus.¹¹

However, the challenges discussed above can be controlled with the help of law, and lives can be improved in various ways, discussed below. Litigation of the right to health is one of the ways in which challenges facing the health sector can be controlled. Litigation has been understood as a process through which legal actions are brought before courts to enforce particular rights.¹² Litigation has, over time, become a recognised mechanism for holding governments accountable to international, regional and national obligations. For

instance, the Center for Health, Human Rights and Development (CEHURD) filed a suit before the Constitutional Court to hold the government accountable for the high number of preventable maternal deaths that occur in public health facilities due to the non-provision of basic essential maternal health commodities to expectant mothers.¹³ This case triggered other cases challenging health rights violations.¹⁴ This has since improved the delivery of maternal health services and it also controls impunities.

Health workers, especially in public hospitals, can be sensitised about the state's obligations under national and international law to avail health services without discrimination against the poor. Immediately noteworthy is the fact that Uganda is party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12 thereof guarantees the right to health. The Committee on Economic, Social and Cultural Rights in General Comment no 14 explained that a state has core obligations, which include the obligation to ensure the right to access health facilities, goods and services without discrimination, especially against vulnerable groups. This can be read with Article 21 of the 1995 Constitution of the Republic of Uganda, which provides for equal protection for all, notwithstanding one's social or economic standing. Furthermore, the Committee highlighted that the state has an obligation to protect the right to health in that even in the case of privatisation, laws must be enacted to ensure that there is equal access to healthcare.

With regard to the indigent people who neither know their rights nor can afford lawyers, they can be sensitised about their rights with regard to health by public interest lawyers, and they can also be represented by the same in court to enforce those rights. For instance, in Uganda, the Public Interest Law Clinic (PILC) has a number of programmes, such as the Community Law Programme and Mobile Clinic (CLAPMOC), that are purposed to extend legal services to poor communities and members of vulnerable groups.¹⁵ Such legal services include legal advice. PILAC also engages in public interest litigation, representing such people from indigent communities, thus enforcing their rights.¹⁶

Courts also have a role to play in controlling the challenges faced in the health sector. In Uganda, there had been an impediment of judicial avoidance whereby



courts, when presented with a question to do with health, would invoke the political question doctrine. The political question doctrine is a judicial principle that a court should refuse to decide an issue involving the exercise of discretionary power by the executive or legislative branch of government.¹⁷ It was first applied in Uganda in the case of *Attorney General v Major General David Tinyefuza*.¹⁸ However, in that very case, Justice Kanyeihamba noted that courts may intervene on grounds that the rights or freedoms of individuals are clearly infringed or threatened. In 2015, in the case of *CEHURD v Attorney General*, the Supreme Court struck down the political question doctrine and the case was referred back to the Constitutional Court to be heard on its merits.¹⁹ The Court highlighted that the Constitutional Court could challenge policy decisions made by the cabinet. If courts can cooperate by hearing cases challenging flaws in the provision of healthcare services, notwithstanding that policymaking is a reserve for the executive under Article 111(2) of the Constitution of the Republic of Uganda, there will be an improvement in healthcare delivery.

In a nutshell, there are various challenges facing the health sector cropping out of poor economic development, as discussed above. However, most of these challenges can be averted if a holistic approach is employed, with joint efforts from the executive, legislature and judiciary. The executive must formulate policies aimed at bettering the health sector; the legislature must enact laws protecting, respecting and observing health-related rights; and the judiciary must review and challenge such policies by the executive or enactments by the legislature. Lawyers also, as the best placed individuals of the legal fraternity, have a role to play in ensuring that the right to health, as enshrined in various national and international laws, is realised, thus improving the health sector in various developing countries.

The donor supporting Moses Baguma's scholarship at Makerere University is Addleshaw Goddard (www.addleshawgoddard.com)

Notes

- 1 Michael Todaro, *Economic Development* (11th ed 2011).
- 2 Mubatsi, 'A Glance at Challenges In Uganda's Health Sector', *Future Challenges* (3 January 2013), <https://futurechallenges.org/local/a-glance-at-challenges-in-Ugandas-health-sector> accessed 4 July 2014.
- 3 *Ibid.*
- 4 Alon Mwesigwa, 'Uganda Crippled by Medical Brain Drain', *The Guardian*, (10 February 2015), www.theguardian.com/global-development/2015/feb/10/uganda-crippled-medical-brain-drain-doctors accessed 20 December 2015.
- 5 *Ibid.*
- 6 See n 2 above.
- 7 *Ibid.*; see also Kate Diamond, 'Uganda's Demographic and Health Challenges Put Into Perspective With Newfound Oil Discoveries [Part One]', *New Security Beat* (26 April 2012), www.newsecuritybeat.org/2012/04/ugandas-demographic-and-health-challenges-put-into-perspective-with-newfound-oil-discoveries-part-one accessed 20 December 2015.
- 8 Annie Kelly, 'Healthcare a Major Challenge for Uganda', *The Guardian* (1 April 2009), www.theguardian.com/katine/2009/apr/01/healthcare-in-uganda accessed 20 December 2015.
- 9 Taddeo Bwambale, 'Uganda Falls Short on 2015 Adult Literacy Target', *New Vision* (28 August 2013), www.newvision.co.ug/news/646585-uganda-falls-short-on-2015-adult-literacy-target.html accessed 20 December 2015.
- 10 Civil suit No 111 of 2012 (HC).
- 11 *Ibid.*
- 12 The Law Dictionary, 'Litigation', <http://thelawdictionary.org/search2/?cx=partner-pub-4620319056007131%3A7293005414&cof=FORID%3A11&ie=UTF-8&q=litigation&x=8&y=8> accessed 4 July 2017; see also Dictionary.com, 'Litigation', <http://legal-dictionary.com/litigation>.
- 13 *CEHURD v Attorney General*, constitutional petition No 16 of 2011 (CC).
- 14 *CEHURD v Nakaseke District Local Administration*, civil Suit No 111 of 2012 (HC); *CEHURD v Attorney General*, constitutional petition no 64 of 2011 (CC); *CEHURD v Executive Director Mulago Hospital & Attorney General*, civil suit no 212 of 2013 (HC).
- 15 The Public Interest Law Clinic, CLAPMOC, <http://pilac.mak.ac.ug/node/23> accessed 4 July 2017.
- 16 The Public Interest Law Clinic, PILAC Activities, <http://pilac.mak.ac.ug/node/4> accessed 4 July 2017.
- 17 *Black's Law Dictionary* (8th ed 2004).
- 18 Constitutional Appeal No 1 of 1997 (SC).
- 19 Constitutional Appeal No 1 of 2013 (SC).

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Tsidkenu Paul Moono
 University of Zambia,
 Lusaka
 moonopaul0@gmail.com

Introduction

The main aim of this essay is to explain how poor economic development contributes to health-related concerns and how the law can be used to control these concerns to improve lives. The essay shall begin by giving an understanding of the two key phrases of the question, which are poor economic development and health-related concerns. The essay shall then move on to substantially address the question. The essay shall, for each category of health-related concern raised, provide the possible legal solutions.

Definitions

The phrase ‘poor economic development’ has no single definition; it follows, therefore, that reliance can be placed on some scholarly work for a working definition. Some scholars define economic development as improvements in material welfare, especially for persons with the lowest incomes, and the eradication of mass poverty with its correlates of illiteracy, disease and early death.¹

Economic development therefore is the improvement in people’s wealth coupled with reduction or eradication of poverty together with its correlate vices like illiteracy, early death and diseases. If economic development can be defined as such, then poor economic development entails little or no improvement in peoples’ wealth, thereby subjecting them to mass poverty, which has a causal link with vices like early death, illiteracy and diseases. Health is the state of being whole, sound, or whole in body, mind or soul, wellbeing.² Therefore, health-related concerns are health problems that endanger lives if they go unchecked.

Main discourse

It is well settled that there is a very strong correlation between the magnitude of health-related concerns and the economic status of each society or nation. The poorer a nation is, so is the health of its population. It is therefore right to say that a country with poor economic development, which is essentially a least developed country, experiences the biggest health problems. However, these health problems can be addressed by law. The following are some of the health-related concerns caused and perpetuated by poor economic development.

The majority of people in countries with poor economic development are uneducated, and their means of survival involve high risks of injury and contraction of occupational diseases, thereby endangering their health as well as their lives.³ Industrial occupations pose the greatest threat to human health through accidents and contraction of certain work-related diseases like cancer and circulatory diseases.⁴ All of these risks are a common feature in countries with poor economic development and come as a result of inadequacy or lack of suitable industrial equipment to ensure the safety of the workers.

Most of these accidental injuries and occupational diseases are caused by negligence of the employer, be it the state or private employer. These health problems can be controlled by using occupational laws and policies. Such laws must ensure that workplaces are free from any potential risks of negligent injuries and contraction of work-related diseases. The degree or standard of safety of the workplaces may, to a greater extent, be set by the international community or the regional bodies so as to oblige state

parties to apply the set standards.

Poor economic development is also responsible for environmental pollution, which is one of the greatest health concerns affecting mostly the developing world. It is common to find countries with poor economic development polluting the environment through unsafe discharge of industrial wastes and careless burning of fuel in its various forms.⁵ This is because people in countries with poor economic development are overly poor, thus resorting to exploitation of natural resources. Second, industry owners find it cheap to dispose waste carelessly without any cost incurred through proper disposition of wastes. Third, such countries face huge challenges in implementing health-related environmental laws, as well as lack of horizontal integration of health and environmental legal and institutional frameworks, which undermines the positive health potential of environmental treaties.⁶ Millions of people in developing countries experience ill health, death and disability all because of poor management of the environment.

Although it is very difficult for countries with poor economic development to implement health-related environmental laws, a minimum standard for implementation of such laws must be observed if people, as well as other living organisms, are to be healthy. The starting point for any country faced with the real challenge of environmental pollution is to realise that, as long as its environment remains unhealthy, so shall its people be, and they will take no meaningful or active participation in economic development. The way forward towards eradication of environmental pollution is to enact laws and formulate policies that deter any form of preventable environmental pollution and encourage preservation of environmental purity. A country can also establish various institutional structures to monitor the environment. Laws can also be stiffened to protect communities that are victims of pollution. For instance, the High Court of Zambia in *James Nyasalu v Konkola Copper Mine* held that the court has a duty to strongly protect poor communities from powerful and politically correct perpetrators.⁷

Countries with poor economic development, for instance, Malawi, which has one of the highest national prevalence rates of sexually transmitted infections in the world, have a higher rate of sexual-related diseases as well as deadly airborne diseases

like tuberculosis.⁸ This is certainly due to the fact that people in such countries are subjected to high levels of prolonged poverty resulting from lack of education, employment and early marriages. To earn a living, such people have to engage in commercial sex, early marriages and generally live in cheap, unplanned and overcrowded areas.

The law can control sexually transmitted diseases by playing the following roles: a prescriptive role, protective role and instrumental role. In its proscriptive role, law is essentially concerned with proscribing certain forms of conduct and imposing sanctions as a consequence of non-compliance.⁹ Prescriptive laws would include laws and policies requiring compulsory screening and compulsory disclosure in certain circumstances. The protective role of law seeks to protect individuals and groups from the adversity consequent upon their sexually contagious disease status.¹⁰

Laws protecting against discrimination, and protecting against publication of health status by authorities, are examples of protective laws. The instrumental role of the law seeks more than to just regulate the relationship between individuals and the infected, affected and society broadly.¹¹ This would involve criminalisation of willful transmission of sexually transmitted infections. For instance, South Africa has penal laws that criminalise willful transmission of sexually transmitted diseases.¹² With regards to airborne diseases, laws which require certain standards for residential houses may be enacted.

A number of countries with poor economic development have the majority of people who are malnourished. As a result of being malnourished, such people become immune-deficient and vulnerable to infectious diseases.¹³ Malnutrition alone is estimated to account for over half of children's deaths annually.¹⁴ Thus, what would be a small epidemic outbreak in a relatively rich town or country ends up being a large pandemic in a poor society.

The law can also control nutritional health problems in a number of ways. The starting point is to recognise that human rights are universal and interrelated. Article 11 of the International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.¹⁵ A country can enact a law that ensures that economic, social and cultural

rights are also justiciable. For instance, the Zambian Parliament included economic and social rights in the Bill of Rights in its Constitutional Bill.¹⁶ This is in a quest to ensure that everyone enjoys the minimum nutritional standard to promote health.

Another great health problem relates to unsafe abortions. It has been noticed the world over that nearly all abortions are unsafe, accounting for 97 per cent done in developing countries.¹⁷ Unsafe abortions among ladies in countries with poor economic development are commonplace due to a lack of means to raise their babies, considering the fact that they are usually burdened by high levels of poverty. Second, laws regulating abortion procedures are usually relaxed because even officers of the law are normally preoccupied with their means of survival, rather than the precious health and lives of the community at large.

The law can combat unsafe abortions by criminalising acts of unauthorised abortion in relation to both the person who is aborting and the assistants of abortion. This would significantly reduce the number of health risks associated with abortion. Some countries, such as Italy, have successfully reduced abortion cases due to criminalisation of unauthorised abortion.¹⁸ Ultimately, lives of people would greatly improve with the significant reduction of the abortion rates of countries with poor economic development.

Lastly, the scourge of child marriage and early pregnancies poses one of the greatest health risks to girls due to poor economic development of their countries.¹⁹ Child pregnancy is a health concern because it exposes girl children to various risks associated with delivery of the baby. Early child marriage mostly comes about due to prolonged exposure to poverty, a fact that is true for girl children living in countries with poor economic development. In the Amhara region of Ethiopia, for instance, rates of child marriage and early childbearing, as well as the consequences such as obstetric fistula, are among the highest in the world.²⁰ Child marriage violates girls' rights in many ways and seriously jeopardises their health. In many places, laws do not prohibit marriage before the age of 18.²¹ Even in places where they do, these laws are not enforced. Policy-makers must put in place and enforce laws that ban marriage before 18 years of age. Governments can also enact laws that require compulsory education of children, so as to enlighten them as well as delay them, to give little room for early marriages.

Conclusion

From the discussion above, it can be clearly seen that poor economic development of a country significantly contributes to many health-related concerns. As earlier established, a country with poor economic development is generally poor, implying that its citizens are subjected to prolonged economic hardships. As a result, their health deteriorates as they are held captives of an unbroken cycle of health-related concerns. Such health problems include: injuries and diseases contracted from unsafe workplaces; environmental pollution; contracting sexually transmitted diseases; nutrition-related diseases; unsafe abortions; and early child pregnancies. In each instance, the law can be a very reliable beacon of hope to significantly reduce or completely eradicate these scourges, if carefully enacted, interpreted and enforced.

The donor supporting Tsidkenu Paul Moono's scholarship at the University of Zambia is the Claude Moore Charitable Foundation (www.claudemoorefoundation.org)

Notes

- 1 See generally Robert E Lucas Jr, 'On the Mechanics of Economic Development', 22 *J Monetary Econ* 3 (1988).
- 2 *Black's Law Dictionary* 852 (4th ed 1968).
- 3 Norman J Waltzman & Ken R Smith, 'Separate but Lethal: The Effects of Economic Segregation on Mortality in Metropolitan Areas', 176 *Milbank Q* 342 (1998).
- 4 Karen Pearson, 'Causes and incidence of Occupational Accidents and Ill-health Across the Globe' 6 (2009), *British Safety Council*, available at www.britsafe.org/sites/default/files/editor/The_Causes_and_Incidence_of_Occupational_Accidents_and_Ill-Health_Across_the_Globe.sflb.pdf.
- 5 Jinzhu Ma et al, 'Sources of Water Pollution and Evolution of Water Quality in the Wuwei Basin of Shiyang River, Northwest China', 90 *J Environl Mgmt* 1168 (2009).
- 6 World Health Organization, 'Regional Committee for Africa, Environmental Health: A Strategy for the African Region' (2002), available at http://apps.who.int/iris/bitstream/10665/95986/1/AFR_RC52_10.pdf accessed 5 July 2017.
- 7 *James Nyasalu v Konkola Copper Mine*, 2007/HP/1286, available at www.zambialii.org/zm/judgment/high-court/2011/86/129.%20Judgment%20-%20Konkola%20Copper%20Mines.pdf accessed 5 July.
- 8 UNAIDS, 'Global Report: Report on the Global AIDS Epidemic' 6 (2013), available at www.unaids.org/sites/default/files/media_asset/UNAIDS_Global_Report_2013_en_1.pdf accessed 5 July 2017.
- 9 Muhammed Tawfiq Ladan, *The Role Of Law In The HIV/AIDS Policy: Trend Of Case Law In Nigeria And Other Jurisdictions* 15 (2008).
- 10 *Ibid.*
- 11 *Ibid.*
- 12 Support to the HIV/AIDS Response in Zambia, 'HIV and AIDS Reference Materials for the Judiciary in Zambia' 33

- (2010), available at www.abtassociates.com/attachments/4.Judges_Manual_ALL.pdf accessed 5 July 2017.
- 13 John Straus & Duncan Thomas, 'Health, Nutrition, and Economic Development', 36 *J Econ Literature* 766 (1998).
 - 14 David L Pelletier & Edward A Frongillo, 'Changes in Child Survival are Strongly Associated with Changes in Malnutrition in Developing Countries', 133 *J Nutrition* 107 (2003).
 - 15 International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3, available at www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx accessed 5 July 2017.
 - 16 Draft Constitution of Zambia Bill, art 58 (2014).
 - 17 World Health Organization, 'Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2000 4 (4th ed 2004)', available at <http://apps.who.int/iris/bitstream/10665/42976/1/9241591803.pdf> accessed 5 July 2017.
 - 18 World Health Organization, 'Women's and Children's Health: Evidence of Impact on Human Rights' 60 (2013), available at http://apps.who.int/iris/bitstream/10665/84203/1/9789241505420_eng.pdf accessed 5 July 2017.
 - 19 World Health Organization, 'Women and Health: Today's Evidence, Tomorrow's Agenda' (2009), available at http://apps.who.int/iris/bitstream/10665/44168/1/9789241563857_eng.pdf accessed 5 July 2017.
 - 20 United Nations Population Fund, 'Population Dynamics in the Least Developed Countries: Challenges and Opportunities for Development and Poverty Reduction' 21 (2011), available at www.unfpa.org/sites/default/files/pub-pdf/CP51265.pdf accessed 5 July 2017.
 - 21 World Health Organization, 'Preventing Early Pregnancy and Poor Reproductive Outcomes Among Adolescents in Developing Countries: What the Evidence Says' 2 (2012), available at http://apps.who.int/iris/bitstream/10665/70813/1/WHO_FWC_MCA_12_02_eng.pdf accessed 5 July 2017.

Ivan Allan Ojakol
East African School
of Taxation, Kampala
ojakolallan@gmail.com

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Health, alongside climate change, poverty and terrorism, is one of the greatest challenges of our times. The right to health is recognised as a human right the world over. Everyone has the right to the highest attainable standard of physical and mental health. The World Health Organization (WHO), in its preamble, defines this right to health as 'a state of complete physical, mental and social well-being, and not merely an absence of disease or infirmity'.¹ It has even been propounded that the promotion of the right to health promotes the right to life.² There are a number of other international instruments that provide for the right to health that many developing countries or countries experiencing poor economic growth are a party to: the Universal Declaration of Human Rights;³ the International Covenant on Economic, Social and Cultural Rights (ICESR);⁴ the Convention on the Rights of the Child;⁵ the Convention on the Elimination of All Forms of Discrimination Against Women;⁶ and the

African Charter on Human and People's Rights.⁷ These international obligations create a responsibility on the governments of countries to adopt policies and legislation that enforces and implements the right to health.

It is in the best interests of governments to provide the best healthcare and services to their citizenry or to improve the economic development of their countries so as to create conditions that are likely to alleviate health concerns. This is because failure to do so is likely to erode trust. Good health and wellbeing were part of the defunct Millennium Development Goals and is now one of the 17 Sustainable Development Goals.⁸ Health and economic development are mutually inclusive. There is a well-established connection between income and health. That wealthier countries have healthier populations is undisputed. With economic growth comes better nutrition, safe and clean water, proper sanitation, world-class healthcare and even education, which in

turn has a positive effect on productivity of a country.⁹

In 2001, African leaders adopted the Abuja Declaration. This Declaration was to the effect that health would come top in the pecking order of the national development plans of the governments of African countries. It was especially a response to HIV/AIDS, tuberculosis and other infectious diseases that had engulfed the continent at the time.¹⁰ African leaders made major commitments as far as the health sectors of their respective countries were concerned, including allocating at least 15 per cent of their budgets to health. However, this has not been the case to date, with only a handful of African countries managing to hit the target, including Botswana and Gambia. The regional average has stagnated at a miserable seven per cent,¹¹ the bulk of this being donor funded through projects like GAVI, the Melinda and Bill Gates Foundation and Global Fund. To make matters worse, these donor funds have been diverted by unscrupulous government officials. A case in point is Uganda, where approximately 500bn in Ugandan shillings were misappropriated. A few convictions were commendably secured by the Ugandan government, like Teddy Sezi Cheye, who was given a ten-year sentence for diverting 120m shillings of Global Fund money to his personal account.¹² While this is worth applauding, a lot still remains to be done, as many of the major culprits – termed as ‘Big Fish’ by sentencing Justice Katutsi – remain at large. Therefore, corruption and impunity are bottlenecks here. The major excuse that African governments front for failure to meet the 2001 Abuja target is the low level of economic development of their countries and that, because of this, allocating 15 per cent of their national budgets to the health sector would be a major constraint on the other sectors like transport and education, among others.

With poor economic development comes shambolic infrastructure. Hospitals and health centers are dilapidated and in a despicable state in many a developing country, and have become inadequate to handle the health needs of the ever-increasing populace. Let’s take the case of my country, Uganda: on 29 December 2011, the leader of the opposition led a delegation on a fact-finding mission in the state of Mulago to the National Referral Hospital. It was found in the labour ward that expectant mothers were packed in dilapidated, tiny, leaking

rooms. In one of the wards, patients and their attendants used a single toilet. The Cancer Institute was also in a sorry state, as there were not enough beds, patients got their drips while seated, and there was only one incubator to serve 100 babies daily. In Wandii Health Center III in a district called Amuria, there are only two wards; when the numbers exceed what they can handle, patients are put together in the same ward, and it also has no maternity ward. This is why 16 women die during child birth every day in Uganda.

In developing countries and countries with low GDP levels, doctors and medical staff are faced with the debacle of poor remuneration. This poor pay demoralises and de-motivates them, thus they cannot carry out their work effectively. There have been numerous cases of medical staff, especially in public health centers, who are not responsive when called upon to do their jobs, which has had devastating consequences. An example is Valentine Inziku’s ordeal. He watched his wife bleed to death as he tried to get nurses to attend to her, but all in vain: ‘[T]he only thing the staff did was they came and they told me... to clean the blood.’ This has led to things like a brain drain, as doctors move to countries where they can be sufficiently remunerated.

This poor remuneration has also led to the proliferation of private clinics and hospitals that are more expensive than the public ones, as medical personnel try to go out of their way to earn an extra income, thus giving less time to their jobs in public hospitals. Doctors who are paid a fixed salary in Uganda are absent 35 per cent of the time. Due to this, absenteeism of well-qualified health workers in public health centers is at an all-time high. This leaves the unsuspecting members of the public at the mercy of unqualified people. In rural India, untrained staff provided healthcare 64 per cent of the time.¹³ The private sector, being a mix of herbalists, traditionalists, homeopaths and many untrained medical personnel, needs regulation so as to fight unscrupulous people from taking advantage of the public.

When a country has low incomes and there is widespread poverty, the levels of education are also affected. Due to poor education, many communities in developing countries still believe in and practice traditions such as female genital mutilation (FGM) and child marriages. These have drastic effects on health. In Uganda, for instance, the statistics are alarming: 20 per cent of girls aged 15

to 19 are currently married; 49 per cent of them are married before their eighteenth birthday, and one in every four girls are already mothers or pregnant with their first child.¹⁴ This leaves these young girls exposed to health risks like fistula and HIV/AIDS. The effects of FGM, like massive bleeding and extreme pain during sexual intercourse, difficulty in passing urine and other infections, are well documented.

At the heart of this economic growth and health debate is a sticky issue called 'inequality'. The disparities in health services provision between developed and developing countries speak volumes: the life expectancy in Japan is 83 years, while that of Sierra Leone is 45 years. Life expectancy has increased in every wealthy industrialised country over the past two decades, but has declined in Botswana, Lesotho, South Africa, Swaziland and Zimbabwe, mainly because of HIV-related deaths. Ninety-nine per cent of child deaths occur in low and middle-income countries. In 2012, Norway spent \$9,055 per capita on healthcare, while Eritrea spent \$15 per capita.¹⁵ The aforementioned statistics are indicators of the inequality that comes with poor economic development as far as health is concerned.

Uganda spends \$150m annually on the treatment of government officials abroad.¹⁶ So, the high and mighty get preferential treatment while the ordinary persons or, more aptly in Franz Fanon's words, 'The Rugged of the Earth', are subjected to the nation's health system, which is in dire straits. To put this in perspective is the case of a Ugandan eight year old, Emmanuella Anzoyo, who was attacked by a stray dog. Her mother, who was unemployed and under the care of some good Samaritans, took her to a hospital and was required to pay a certain amount of money, SHS250,000 for the anti-rabies dosage, which she of course could not afford.¹⁷ Therein lies the difference between the 'haves' and 'have-nots'.

Pharmaceutical companies have also affected the right to health as far as poor countries are concerned. It is true that these companies make a positive contribution to the right to health through their innovations of medicines and drugs; however, they have also negatively affected access to medicines for low-income countries. This is by keeping the prices of medicines very high. All countries that are members of the WTO are party to the Agreement on Trade Related Aspects of Intellectual Property (TRIPS)

which provides for patent rights that last 20 years for the inventors of the drugs to benefit from their sweat. This means that people have to wait for 20 years in order to access the medicines and drugs and generic companies cannot find a way of inventing around a product so as to come up with a cheaper drug. This is a manifestation of discrimination because poor countries cannot afford these drugs and have to wait for the end of that 20-year period while infectious diseases like Ebola devour their people.

How the law can address these concerns and improve lives

In 2001, The Doha Declaration on The Agreement on Trade-Related Aspects of Intellectual Property and Public Health was adopted. The Doha Declaration is to the effect that the TRIPS Agreement should not prevent member states from taking measures to protect public health. The Doha Declaration acts as a waiver to allow countries producing generic pharmaceutical products to export them to importing countries that are unable to manufacture medicines themselves.¹⁸ In my view, the Doha Declaration should be negotiated into an agreement by the members of the WTO so as to make it legally binding with sanctions thereto in case of failure to abide. It should also have an effective monitoring, review and verification process. The same should be done for the Abuja Declaration because African leaders owe it to their people to ensure that they (the people) are in good health with world-class healthcare.

A health insurance scheme is another option that the law could adopt so as to address health concerns and improve lives in countries experiencing poor economic development. These countries can borrow the Rwanda template: people in Rwanda pay \$2 per year and ten per cent of their treatment costs and this has increased access to healthcare.¹⁹ In these poor countries, the law on this national insurance scheme should borrow from the social security model which many of them have, that is to say the employees and their employer contributing a certain monthly percentage, say four per cent of their earnings. It could also be akin to the Pay As You Earn (PAYE) model. This would go a long way in offsetting this health conundrum.

There is also need for judicial activism if the fight for proper healthcare is to succeed.

The ‘political question doctrine’ limits the judiciary’s reach over matters of a ‘political’ nature, otherwise considered as exclusive functions of the executive or legislative branch. The Ugandan case of *CEHURD v AG* is a good example: the Supreme Court struck down a 2012 ruling by the Constitutional Court which had absolved itself of looking into the matter of the non-provision of maternal health services, stating that it was barred by the ‘political question doctrine’.²⁰ There was even an earlier decision in *Minister of Health v Treatment Action Campaign* where the Court forced the South African government to adopt one of the largest programmes in Africa as far as reduction in mother-to-child transmission of HIV/AIDS is concerned.²¹ The judges must exercise judicial power in line with the norms, values and aspirations of the people.

I conclude with Ralph Waldo Emerson’s words, ‘The first wealth is health’.

The donor supporting Ivan Allan Ojakol’s scholarship at the East African School of Taxation is Cliffe Dekker Hofmeyr (www.cliffedekkerhofmeyr.com)

Notes

1 World Health Organization, Constitution (1946), Preamble.

2 Human Rights Committee, General Comment 6, Article 6, 16th Session (1982).

3 Universal Declaration of Human Rights, art 25.

4 International Covenant on Economic, Social and Cultural Rights, art 12.
 5 Convention on the Rights of the Child, arts 23–24.
 6 Convention on the Elimination of All Forms of Discrimination Against Women, art 12(2).
 7 African Charter on Human and People’s Rights, art 16.
 8 Sustainable Development Goals, No 3.
 9 David E Bloom, ‘The Shape of Global Health’, 51 *Finance & Development* (2014) (‘The world has come a long way but still has a long way to go’).
 10 Sarah Nakimbowa, ‘Do African leaders finance health as set in the Abuja Declaration?’, *Key Correspondents Reporting for Action on HIV* (March 8, 2012), www.keycorrespondents.org/2012/03/08/do-african-leaders-finance-health-as-set-in-the-abuja-declaration accessed 7 July 2017.
 11 Uganda’s allocation to the health sector for the last five years before the FY 2014–2015 stagnated at seven to nine per cent.
 12 Frederick M Masiga, ‘Bare Knuckles: Why We Failed to Pin Chogm Thieves’, *Daily Monitor* (10 April 2011).
 13 Jorge Coarasa, et al, ‘Private v. Public’, 51 *Finance & Development* (2014) (‘In many countries, the debate should not be about the source of primary health care but its quality’).
 14 Elizabeth Amongin, ‘Child Marriage Increase Spread of HIV Scourge’, *Daily Monitor* (1 December 2015).
 15 *Ibid.*
 16 Ismail Musa Ladu, ‘Government Spends Shs380 Billion on Officials’ Treatment Abroad’, *Daily Monitor* (24 April 2012).
 17 CEHURD, *Emmanuella Anzoyo, suing through next friend, Christine Munduru and Anor v Wakiso District Local Government and Medical Superintendent Entebbe General Hospital*.
 18 The Right to Health, Fact Sheet No 31.
 19 Sarah K Nabukera, et al, ‘Use of Postpartum Health Services in Rural Uganda: Knowledge, Attitudes, and Barriers’, 31 *J Community Health* 84 (2006).
 20 Constitutional Petition No 16 of 2011.
 21 (2002) 5 SA 721 (CC) (South Africa).

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Nsofwa Puta
 University of Zambia,
 Lusaka
nsofwaputa@gmail.com
 Not published

The nations of the world have agreed that enjoying the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief and economic or social condition.¹ However, realisation of this right is becoming a global

concern, especially for countries experiencing poor economic development. To this end, this essay aims to discuss how poor economic development contributes to health-related concerns and how law can control these concerns and improve lives. To achieve this aim, the essay will firstly explain poor

economic development and health-related concerns. Secondly, the essay will discuss how poor economic development contributes to health-related concerns. Thereafter will be a discussion of how law can control health-related concerns and improve lives. This essay will end on a brief and elaborate conclusion.

Poor economic development and health-related concerns

To start with, it is important to note that there is no agreed definition of economic development. This is evident from the fact that different scholars define economic development differently. Amartya Sen considers economic development to be the strengthening of autonomy and substantive freedoms, which allow individuals to fully participate in economic life.² According to Stephen Smith, economic development is the presumed solution to poverty and many pressing problems in the world such as inequality in the distribution of income and low life expectancy.³ Economic development is also defined as the adoption of new technologies, transitions from agriculture-based to industrial-based economy and the general improvement in living standards.⁴

From the above definitions, it is prudent to argue that the following are the indicators of economic development: rise in real per capita income; rise in quality of life, that is, low infant mortality rate, low maternal mortality rate and high life expectancy; rise in the presence of highly-educated professional elites and skilled workers; substantial reduction in poverty levels; improvement in road-network and more infrastructure such as hospitals. Therefore, if there is poor economic development in a country, it means that there is no rise in per capita income, there is poor quality of life, poor road networks and infrastructure, high poverty levels and poor education standards.

The current health-related concerns include malnutrition; high maternal mortality rate; high infant mortality rate; high morbidity rate; low life expectancy; inadequate health facilities; difficulties in accessing health facilities, especially for people living in rural areas; poor healthcare services; lack of skilled birth attendants and post-natal care services; and inadequate access to essential medicines and vaccinations to cure or treat certain illnesses like Polio, Malaria, Dysentery, Cholera, Tuberculosis,

HIV/AIDS and sexually transmitted diseases such as syphilis. On the strength of the assertion advanced by De Beer⁵ that there is an interactive relationship between health and economic development of a country, there is no doubt that poor economic development contributes to the aforementioned health-related concerns.

How poor economic development contributes to health-related concerns

Poor economic development is characterised by high levels of poverty. The most common effect of poverty is malnutrition which happens to be one of the health-related concerns.⁶ Malnutrition is mainly seen in children and elderly persons of poor families. This is because a family on a very small budget is more likely to purchase food that is less nutritious, simply because that is all they can afford. Furthermore, people living in poverty rarely have access to highly nutritional food. Even if they happen to have access to nutritious food, it is unlikely that they are able to purchase them in that, the healthiest foods are usually the most expensive. Therefore, when there is poor economic development, levels of malnutrition increase as a result of poverty.

Furthermore, when there is poor economic development, the life expectancy reduces and child mortality increases due to high levels of poverty. People living in poverty lack the necessary financial resources to maintain a healthy living environment and life. They are almost always lacking nutritious food, thus decreasing the ability of their bodies to fight off diseases and consequently prolong their lives. In addition, poverty results in poor sanitation conditions, therefore increasing the chance of poor people to contract life-threatening diseases like cholera and dysentery which they cannot treat due to inability to afford the inappropriate medicines.⁷

While most illnesses, especially infectious diseases like Tuberculosis and Cholera, are preventable or treatable with existing medicines, poor road networks cause difficulties in accessing health facilities, medical personnel and essential medicines, especially for people living in rural areas who are required to travel to a clinic or hospital which is located in town. Therefore, it is sensible to argue that, when there is poor economic development, there are difficulties in accessing health facilities, medical

personnel and essential medicines because of poor road networks.

When there is poor economic development in a country, the financial resources required to build, maintain and stabilise proper healthcare systems are insufficient because of low per capita income. Furthermore, low per capita income results into problems in purchasing, transportation and distribution of medicines and vaccinations which are not manufactured within the country. Therefore, poor economic development through low capita income contributes to unavailability of essential medicines and inadequate health facilities.

It is important to note that, when there is poor economic development, the levels of maternal mortality rate, morbidity rate and infant mortality rate increase because of poor healthcare services such as unskilled birth attendants and post-natal care services. Furthermore, considering that poor economic development is characterised with lack of necessary infrastructure and poor education standards,⁸ this entails that certain areas do not have health facilities, thus expecting mothers and new-born babies die before they can access a clinic or hospital. In addition, when there are poor education standards due to poor economic development, it means that the number of skilled health personnel with a mandate to provide healthcare services such as lawful abortion procedures and operations reduces, thus contributing to high death rates.

How law can control health-related concerns and improve lives

Health-related concerns in the least developed countries are created by humans and thus only solvable by humans. The actions to be taken need to solve the concerns and not exacerbate them or create another set of problems. To this end, the following is how the enactment of law can control health-related concerns and consequently improve lives of people, particularly in least developed countries.

The law can control health-related concerns and improve lives by clearly identifying the roles that all health actors like non-governmental organisations (NGOs), community-based organisations and the private-for-profit sector have to play in improving the health of poor people.⁹ In other words, the law can set standards for health service providers such as all health

providers must provide adequate and quality healthcare to all patients despite their status, age, sex, beliefs and place of origin, thus controlling the concern of lack of quality healthcare services.

The law can also control health-related concerns and improve lives by placing an obligation on the state to endeavour to provide clean and safe water, adequate medical and health facilities, decent shelter for all persons and take measures to constantly improve such facilities and amenities. For example, in Zambia, the right to enjoy the highest attainable standard of health is not justiciable, that is, it cannot be legally enforceable in any court, tribunal or any administrative institution. However, Article 112 of the Constitution of Zambia¹⁰ recognises this right as a directive principle of state policy which may be observed only in so far as state resources are able to sustain its realisation, or if the general welfare of the public so unavoidably demands, as may be determined by the cabinet.¹¹

Another way in which law can control health-related concerns is by regulating the overall governance and cost of delivery of quality health services in the public and private sectors. This is in order to protect the poor from excessive or unaffordable healthcare costs, thus controlling the concern of inaccessibility of quality healthcare services, medicines and vaccinations.

The law can also urge the government to prioritise public health, improve medical infrastructure so as to enable the provision of adequate health facilities and create an environment conducive for researching certain diseases and the cures or treatment. Furthermore, the law can place an obligation on the state to devote more of its scarce resources to meeting the health needs of the citizens such as proper sanitation, clean and safe drinking water, medical equipment and properly trained health personnel.¹²

The law can control the high maternal mortality and morbidity rate, which is a health-related concern, by criminalising harmful practices that can contribute to high morbidity and mortality during pregnancy, such as drug abuse. The law can also make provision for steps that can be taken to combat early and unwanted pregnancies, particularly among adolescent girls, such as access to modern contraceptives and condoms. In addition, the law can also place an obligation on the state put in place measures to ensure universal access to lawful

abortion services, respectful maternal care and treatment, vaccinations for babies, medicines and drugs such as antiretrovirals.

The law can also control gender-based violence (GBV), which is a health-related concern, by treating all forms of violence on the basis of sex as offences which are punishable. The law can also set-out the practical steps that the government must put in place to protect survivors of GBV, such as making shelters, providing survivors with financial support and training to help them begin a new life. Zambia has the Anti Gender-Based Violence Act¹³ which prohibits all forms of violence. This Act provides for the protection of victims of gender-based violence, it creates the Anti-Gender-Based Violence Committee and establishes the Anti Gender-Based Violence Fund. The Anti Gender-Based Violence Committee has the following responsibilities to make recommendations for a national plan of action against gender-based violence; to monitor and report on the progress of the national plan of action; to advise the Minister on policy matters connected with gender-based violence; to propose and promote strategies to prevent and combat gender-based violence; to recommend guidelines for disbursements from the Fund and to deal with any matter relating to gender-based violence.¹⁴ Furthermore, Section 32(3) of the Anti Gender-Based Violence Act provides that the monies of the Anti Gender-Based Violence Fund should be applied to the basic material support of victims and any other matters connected with the counselling and rehabilitation of victims in their best interest.

In conclusion, this essay has discussed how poor economic development contributes to health-related concerns and how the law can control these concerns and improve lives. In doing so, this essay has shown that there is an interactive relationship between health-related concerns, economic development and the law.

The sponsor supporting Nsofwa Puta's award is Cozen O'Connor (www.cozen.com)

Notes

- 1 The Constitution of the World Health Organization (1948).
- 2 A Sen, *Commodities and Capabilities* (Oxford University Press, 1999).
- 3 SC Smith, *Case Studies in Economic Development*, (3rd Edition, George Washington University 2003) p 3.
- 4 See www.businessdictionary.com accessed 15 December 2015.
- 5 F De Beer and H Swanepoel, *Introduction to Development Studies*, (2nd Edition, Oxford University Press 2000) p 184.
- 6 5 Effects of poverty at www.borgenproject.org accessed 21 December 2015.
- 7 *Ibid.*
- 8 See n 3 above, p 3–5.
- 9 DAC Guidelines and reference Series, 'Poverty and Health' (World Health Organization: Organisation for Economic Co-operation and Development, 2003), p 31.
- 10 Act No 18 of 1996.
- 11 Article 110(2) of the Constitution of Zambia, Act No 18 of 1996.
- 12 Y.Von Schirding and C.Mulholland, 'Health and Sustainable Development: Key Health Trends' (Report Prepared for the UN Secretary-General).
- 13 Act No 1 of 2011.
- 14 Section 31 of the Anti Gender-Based Violence Act, Act No 1 of 2011.

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

**Ftsum Sbhatu
Tewolde**

Adi Keih College
of Arts and Law,
Asmara

sibfache@gmail.com

Introduction

This essay tries to address first the situations of health-related matters when there is poor economic development and then proceeds to discuss how the law deals with such situations to improve lives. Basically, the general contributions of poor economic development to health-related concerns can be categorised as negative and positive contributions. The negatives are those caused by poor economic development and the positives are those elements which are beneficial to the poor, simply because of its less complex subjects. Nevertheless, for the purpose of clear and detailed discussion, I prefer to put emphasis on the negative contributions of poor economic development and how these negatives can be controlled, or at least minimised, by the law to improve lives. In the end, a conclusion is delivered.

Poor economic development and health-related concerns

In determining whether a given country has poor economic development or not, the scale of economic development can be perceived relatively. For example, comparing the Indian economy to the United States, the former can be described as having poor economic development. On the other hand, if we see the Eritrean economy in relation to the Indian economy, the latter can be described as having greater economic development. Moreover, if we take it as if we have to consider the average cost of life for citizens, economic development may also be understood in a very different way to measure the actual development and to bring a clear definition to that term. Thus, for the sake of having an identified answer to the question in

this essay, I define economic development in terms of real per capita income. Therefore, countries with per capita income less than US\$1000 per year are countries with poor economic development.¹

As long as health-related concerns demand a vast investment materially and financially, improving the health affairs of a given country requires great capital in order to provide basic services to all the citizens. This is because securing health concerns is one of the primary goals of every nation to evolve socially, economically and culturally, and more importantly, to take care of the wellbeing of the society. Poor economic development has a tremendous effect on the process of accomplishing the mission and on safeguarding health-related concerns. If a country is not capable of providing needed health services to the public due to economic challenges, then it may be considered a country of poor economic development. Besides, other restraints like mismanagement and the like, internal defects can also play a detrimental role to ensure equal distribution of resources and, at this juncture, a particular nation can face more impediments to fight with its poor economic situation if its internal laws do nothing to detect such negatives. Therefore, what I am trying to say is that the law should be very effective and systematic to handle the extra-economic challenges.

Poor economic development may cause various problems with regard to lack of physical capital (roads, structures, bridges, equipment, vehicles, etc) and lack of human capital (which is as important as the physical capital). Often, the labour force in developing countries is illiterate or lacks the necessary training. At this point, one can come up with an idea that health-related concerns are

heavily affected by these shortcomings. For a hospital to be built, for instance, efficient and modern physical capital, like infrastructural equipment, is highly needed to establish the health station. This is necessary for the actualisation of health services because human capital (the health experts in this case) is the necessary device that realises and implements the very purposes of such a station. If there are not enough qualified doctors and other related personnel, providing only the physical capital leaves the health centers with a lot of emptiness. Individuals of poor economic background are the first victims of this emptiness and, if the government is not providing some essential resources, the poor citizens are forced to search the scarce and scattered private doctors who charge double what is charged by the government. To minimise the risk of such a situation, the law of a particular developing country should encourage:

- trade with foreign nations to obtain capital to ultimately use it for the benefit of its citizens in providing health resources;
- direct investment of private corporations to attract private foreign investment which usually requires social and political stability, good transportation and communications infrastructure, and human capital, all or some of which may be lacking in the developing countries; and
- public international financial institutions, such as the World Bank and the International Monetary Fund (IMF), to lend their hands.²

For example, the World Bank provides loans at reduced interest rates to help developing nations acquire capital. And the IMF lends to countries over the short term to remedy the balance of payments deficits, and requires in exchange rigorous economic policy measures from the borrowing nation to cut internal expenditures and increase exports.

Moreover, countries with poor economic development should strengthen their international social networks with the developed countries pertaining to different health services. This can help them cope with their shortcomings to fund and provide enough and adequate materials to be used in the process of maintaining and improving the health conditions of the poor society. Such a situation may require assistance from international organisations or other nations to be resolved. For example, there is a group of German health professionals who annually visit Eritrea and play a crucial role in fulfilling

the gaps in relation to diseases which cannot be cured by Eritrean capability. Likewise, the Department for International Development (DFID) works for inclusive growth through a number of programmes and continues to spend heavily on health-related concerns, which have a major impact on poor people's ability to take part in growth opportunities to improve their lives.³ With regard to the question of how can law govern the health-related concerns, I would like to say that the host country (for example, Eritrea in this case) should have laws that draw the diplomatic relations safely to create a close socio-economic tie with developed nations like Germany. If your diplomatic relation with others is friendly, you are always secured to fight your drawbacks, and since it is a generally accepted truth that the developed nations' experience is deeper and longer, developing countries should not be reluctant to welcome the same and strive for the interest of their people in order to end with an improvement in the lives of their citizens.

How can law regulate health-related concerns and improve lives?

Here, it is important to identify what the health related concerns are. As per my understanding, such concerns are those which are related to health rights. In order to discuss this question, therefore, it is necessary to define the health rights protected under the law, and discuss how the law should govern them to improve lives of the people under poor economic development. The health-related concerns are one of the main socio-economic rights of human beings with the widest and most extensive human rights that may be had in relation to their socioeconomic lives. Therefore, the rights on such aspects are those rights which give power to society to freely enjoy their socio-economic lives. Nonetheless, there are difficulties as to their enforcement and implementation as long as they are to be implemented progressively based on the economic level of development of a particular nation. Thus, there is no uniformity with regard to their enforcement worldwide. This is true where there are discrepancies with reference to the developed and underdeveloped countries as to the means of enforcement.

The right to health is recognised and protected in various international human rights instruments. Moreover, a state also has a legal obligation to respect, protect

and fulfill these rights, and is expected to take progressive action towards their fulfillment. The Universal Declaration on Human Rights recognises a number of health related rights under Article 25. And the International Covenant on Economic, Social and Cultural Rights, pursuant to its Article 12, guarantees the ‘right of everyone to the enjoyment of the highest attainable standard of Health’, and calls for the ‘provision for the reductions of... infant mortality and for the healthy development of the child; the improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational, and other diseases; and the creation of conditions which could assure to all medical service and medical attention in the event of sickness’.⁴ Having poor economic development is the main obstacle to fulfilling such provisional calls of municipal and international legal instruments. In fact, some of them (like that of reducing infant mortality) may not demand prosperous economic development because they can simply be managed with less capital and by arranging regular health campaigns and promotional announcements through mass media. For instance, though Eritrea has poor economic development, it has come to effectively control the infant mortality rate during the last 20 years.

Lawyers and academics continue to debate whether and how these rights should be enumerated in constitutions. The socio-economic rights like health are considered second generation, less important rights. These scholars say that second generation rights do not belong in a constitution and that they should either be left to the legislature or should be included in the Constitution as non-justiciable directives or fundamental principles.⁵ If constitutions do not expressly state them, then health-related concerns are always in jeopardy to enjoy their implementation. Indeed, a given state may not be undermined for its failure to enforce the health rights of individuals because of poor economic development. However, the inclusion of such rights as non-fundamental elements of human rights may cause some psychological and confidential deterioration among those who consider health indisputable, in the sense that it is the basis for the ultimate goals of progression that the society wants to achieve. In point of fact, as far as the permanent sovereignty of a state is concerned, it is the state that enjoys actual

control over the available resources within the country; and it is the mouth of that state (the government) that tells the citizens (who want to enforce their rights) what the law says ‘within the limit of its resources’.

Now, if the law is consistently worded like that, it gives absolute discretion to the government, which may misuse its power. Therefore, I would aver that any law should consider health-related concerns fundamental and enforceable; and that the language of the law dealing with such rights would need to be crafted with the goal of inspiring citizens that they have the right to enforce their health-related concerns. Additionally, the law should also effectively regulate the behaviour of society to harmonise them so that they can flourish when given the opportunity to enhance these rights under certain circumstances. That is to say, the law should create an encouraging situation of unity and similarity in the way the society thinks to overcome the poor economic condition. For example, if there is no problem as to religion and ethnicity that had to be addressed, all ethnic groups of a given country would feel included in the process and would develop a stake in the bringing up of their country in every manner (save that improving lives through the best health missions is one among the many).

The difficulty of enforcing health-related concerns

Even if the law can include the list of substantive aspects of such concerns, it is always difficult to have a detailed procedure as to how these rights are to be exercised and enforced. This is simply because the health-related concerns are resource incentive concerns. Therefore, individuals can exercise these rights not only because such rights are incorporated within the law, but there also must be resources as well as endeavour from the government. Of course, for the government to show the maximum effort to implement these rights, the law should be able to effectively regulate government accountability and transparency; to ultimately wipe out any kind of corruption that can cause deterioration of such rights beyond the poor economic development (which adversely results from limited resources).

We cannot conclude that it is impractical to enforce such rights. For example, let’s say that some people have petitioned that the government failed to establish a hospital in

their surrounding area. The government cannot have a law that says 'Let the hospital be in place X or in place Y, etc.' But, the government, the Ministry of Health in this case, might have a vision or a plan about what requirements and criteria are needed to decide where and how a hospital should be provided for in a given community. For instance, the Ministry may say, 'If we are to establish a hospital, the area must be with a population of not less than 10, 000 and it should be able to provide service to three zone areas, etc'. Here, if one area has fulfilled the prima facie requirements listed by the Ministry (government), it can challenge the government, when the government provided a hospital to another place by disregarding its demands, based on the law. Therefore, when it is said that it is difficult to implement such rights, it means that the government has to take into account the resources if they can afford such capability of enforcing the said rights

One illustration I would like to discuss here is the right to be treated. A person may have the right to be treated, and this is his socioeconomic right, which is protected by the different laws (constitution and statutes). However, in this case, one may contend that 'having right is one thing and its practicability is another thing'. That is to say that it is the economic status of the needy person that determines whether he will be treated or not. For example, let us say that there is one Eritrean child named Jonathan with a grave health problem (blood cancer), and he is ten years of age. This child is from a poor family and his parents could not afford the medical expenses incurred by the professionals. This is because the doctors from the hospital told them that they have to make every effort for the child in taking him to a foreign country for higher medical care, otherwise there is no way that he can be treated in Eritrea because the health centers in Eritrea do not have any capability and experience of handling such sicknesses. At this point, it is clear that the parents have no legal basis to go to the judiciary and pray before the court to order for the child to be treated in Eritrea.

Eritrea has no way of treating blood cancer. At the same time, the parents have no right to compel the doctors to cure their child. Therefore, what we understand here is that Jonathan is being left with an unfulfilled right of treatment, not because of his exclusion to enjoy the same, but because of limited resources and, simultaneously, because of his

poor economic background for he has no economic capacity to afford his treatment fees. To connect this illustration with the basic question of this essay, the poor economic development of Eritrea is directly or indirectly contributing the same with Jonathan's story. And the possible solution of the law in relation to Jonathan's case is to reserve a branch of law which concerns such issues. The only option for Jonathan to maintain his health is to move outside of Eritrea. Still, he cannot afford the transportation fees and that of foreign hospital fees. Under such circumstances, the aviation law of poor countries should especially favour persons like Jonathan to fix their disability to pay transportation fees, and international law should effectively regulate international health programmes to aid such individuals in their treatment charges.

Conclusion

If we are saying that the realisation of health-related concerns is directly linked to the level of economic development of a given nation, it can be argued that one should not expect the full enforcement of his health rights in a country of poor economic development where its national economy is at the infancy stage. Thus, if we are to speak strictly about such a case, the observance of such rights requires a large amount of resources as they are resource incentive rights, and not cost-free rights. Therefore, the law does not improve lives by bypassing this phenomenon; meaning, the law can only regulate the devices on how the government should distribute the available resources equally to safeguard the health-related concerns of the citizens. Other than this, the law should place various powers upon the people to enforce their health and health-related rights not only within the limits of their national resources, but also with the aid of the different international programmes. Thus, in order to realise such public power, the internal laws of the poor countries should be designed so that the citizens are free to enjoy the fruits of international cooperation so that they can improve their lives.

The donor supporting Ftsum Sbhatu Tewelde's scholarship at Adi Keih College is DLA Piper (www.dlapiper.com)

Notes

- 1 Development and Poverty 1, available at www.globalchange.umich.edu/globalchange2/current/lectures/dev_pov/dev_pov.html accessed 11 November 2015.
- 2 *Ibid*, at 6 (How can less developed countries acquire capital?).
- 3 Growth: Building Jobs and Prosperity in Developing Countries 2 (2008), www.oecd.org/derec/unitedkingdom/40700982.pdf accessed 5 July 2017.
- 4 Universal Declaration on Human Rights, art 25; International Covenant on Economic, Social & Cultural Rights, art 12.
- 5 Lea Bril Mayer & Catherin Adcock, 2 'Selected Topics in Comparative Constitutional Law' 89, *NY Sch of Law* (1994).

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Negese Tujuba Erba

Addis Ababa University, Addis Ababa

tujubanegese@gmail.com

Introduction

In this short essay, the effect of poor economic development on health and the role of the law to control these effects and improve lives will be discussed briefly. I start with the definition of key terms of the essay; that is, poor economic development, health and law. Then, I will identify issues to be discussed in the essay. After the identification of the issues, there will be a brief discussion on the effects of poor economic development on health, the role of the law in controlling these effects and how the law can improve lives in poor economic development. Finally, the conclusion on the finding of the essay will be addressed.

Definitions

Poor economic development means the economy of the country in which the people live under poverty and where the economy is not yet developed to afford people sufficient means for living. It might not mean poor economic growth. The poor economic development may depend on the high progress of economic growth.

Health as defined in the preamble to the Constitution of the World Health Organization is a state of complete physical, mental and social wellbeing. The

International Covenant on Economic, Social and Cultural Rights (ICESCR) defines it as the highest attainable standard of physical and mental health.¹ *Black's Law Dictionary* also defines health as 'the state of being sound or whole in body, mind, or soul, or freedom from pain or sickness'.² We understand from these definitions that health is about being in a convenient condition to the nature of a human being.

It is difficult to find a single universal definition for law. However, when we look at different dictionaries and the writings of scholars, it can be defined as a body of rules which are mostly made by the government for the purpose of guiding the activities of the government and society towards creating certain norms according to which the government and the society will behave.³ It is an instrument by which the government enforces its policies and strategies in different sectors, including the health sector.

Issues

- How does poor economic development contribute to health related concerns?
- How can the law control the adverse effects of poor economic development on health?
- How can the law improve the health condition or lives of the people in poor economic development?



The effects of poor economic development on health and health as a human right

Economy and health are two variables that feed each other. Where there is a developed economy, there will be sound health conditions, and where there is good health conditions, there will be high economic growth, as a result of which economic development will come.⁴ The 'wealthier are healthier'⁵ and the healthier will be wealthier. In general, poor economic development has a negative effect on the health of the people in a given country. This being the reality, it is the role of the government to look for possibilities of affording the best attainable health conditions to the people. One of these possibilities may be the control of adverse effects of poverty on health. The control is conducted through the law.⁶

The need for protection of the right to health is necessitated by the nature of the right. The right to health is the core of all human rights, such as the right to life, liberty, the right to education, the right to movement, etc, to mention a few. If the right to health is not protected, an individual with ill-health cannot properly exercise other human rights.

The right to health is a human right that is recognised under international conventions such as the Universal Declaration of Human Rights (UDHR), the ICESCR and the CCR, etc, and under the domestic legislation of different countries like constitutions and other subordinate health laws.⁷ The government of a given country is duty bound to afford the best attainable state of health to its citizens because it is a human right and this requires state enforcement. Poverty cannot be a justification for denial of the right to health. However, this does not mean that the government is duty bound to answer all health-related questions of the people. The resources the country has may determine the extent of its health protection.

How the law can control the effects of poor economic development on health

As it is defined above, law is an instrument by which the government controls and administers the affairs of the peoples in the country. The law is enacted in order to implement the policies and strategies of the government in specific areas. As a result, the government uses the law to implement its health policies and strategies.

The effectiveness of the control of the law

on the effects of poor economic development on health may be determined by the health policies and strategies of the government. Nevertheless, the government can control the adverse effects of poor economic development on health by enacting laws that will prevent the causes of disease and promote the health condition of the people. In this case, the government is required to be wise, to give firsthand to the interest of the vulnerable majority part of society, such as children, women, marginalised groups and indigenous people. It is also advisable to focus on preventive measures since the cost of prevention is less than the cost of cure.

For instance, when we see the practice of Ethiopia, many laws were enacted to promote health conditions of the people. Few among these are consumer protection laws, social health insurance laws, food and medicine control laws and environmental protection laws. These laws are focused on prevention of diseases and mitigating risks of diseases by providing mechanisms of control of diseases, and legal remedies for acts of individuals which negatively affects public health. The preventive measures can be taken by environmental protection, providing vaccinations, controlling food adulteration and use and transaction of drugs, fair food supply, providing health-related education or awareness creation, etc. These preventive measures can be effective by enacting a law that will help their implementation.⁸

Making effective laws to control the adverse effects of poor economic development on health and improve lives

The purpose of health legislation is to promote the health and wellbeing of society and to prevent disease in a country. The legislation helps to implement the health strategies of the government to ensure sound health conditions for all the peoples of the country. In order to attain this purpose, the legislation is required to be effective, comprehensive and enforceable. The effectiveness of legislation is determined by its contents. The content of laws are required to be full and comprehensive to address all matters or questions that will potentially arise in relation to them. Therefore, health laws are required to be clear as to 'who does what' under that specific legislation.⁹ They should clearly set out the rights and duties of peoples addressed by the legislation; that is, ordinary people and health professionals.

They should clearly determine: the powers and duties of the implementing organ; procedural issues, such as how to implement the legislation; the manner of resolving disputes that will arise in relation to the legislation or the effect of non-compliance with the provisions of the legislation; the manner of interpretation of the legislation in a friendly way to society; and the sources of funds for the implementation of the legislation.¹⁰ In the absence or insufficiency of the above six qualities of effective legislation, the legislation that is made for the purpose of controlling and improving health conditions will not be properly applied and the goals of such legislation will not be attained.

The other requirement is that health legislation be clear and understandable to everyone, irrespective of profession and level of education. Since the issue of health concerns every individual in the country, it is required to be accessible to them free of ambiguity, equivocality and with the least degree of vagueness.¹¹ Health legislation is also required to be made in a way that promotes the freedom of individuals to determine their health-related affairs and to protect them from external intervention in their health affairs. It is also required to provide equal opportunity of healthcare to everybody.¹² Health-related legislation should ensure equality between the poor and the rich by providing healthcare facilities in a cost-effective manner and avoid any discrimination on the basis of economic, political, social or any other status among individuals.

They should guarantee:

1. the availability of healthcare facilities;
2. the accessibility of healthcare facilities, which means non-discrimination, physical presence of healthcare facilities, accessibility to information and economic affordability of healthcare facilities;
3. the acceptability (compliance with human nature); and
4. the quality of the healthcare.¹³

It is better to make health-related laws accessible to the people through printed copies and mass media like radio and television. This helps the implementation of the law because when people properly know their rights and duties, they will behave accordingly and the purpose of the law will be achieved easily.

Conclusion

Poor economic development has adverse effects on the health conditions of the people unless controlled by effective, comprehensive and easily enforceable law. Effective law improves the lives of people in addition to controlling the negative effects of poor economic development on health. Therefore, at the beginning, the law that will regulate the health-related affairs of the country must exist. Then, the laws must be enforced, and in a complete and comprehensive manner, in which they will be able to answer all legal questions that will arise in relation them. They must be easily accessible, understandable and enforceable.

The donor supporting Negese Tujuba Erba's scholarship at Addis Ababa University is Hogan Lovells (www.hoganlovells.com)

Notes

- 1 International Covenant on Economic, Social and Cultural Rights, art 12(1) (1976).
- 2 *Black's Law Dictionary* (9th ed 2009).
- 3 Ann Seidman, et al, *Legislative Drafting for Democratic Social Change: A Manual for Drafters* 10 (2001); see also *Black's Law Dictionary* (9th ed 2009).
- 4 Chronic Poverty Research Center, 'Health and Poverty Linkages: Perspectives of the Chronically Poor', *Background Paper for the Chronic Poverty Report 4* (2008–09).
- 5 See generally Lucy Barnes, et al, 'Why is Wealthier Healthier?', 39 *Perspectives on Eur* 4 (2009).
- 6 Lawrence O Gostin, 'Mapping the Issues: Public Health, Law and Ethics', *Public Health Law And Ethics: A Reader* 5 (2010).
- 7 Constitution of the Federal Democratic Republic of Ethiopia (1995), art 41(4), 42(2), & 44(1) (1995); Constitution of Kenya, art 42.
- 8 Federal Democratic Republic of Ethiopia, *National Hygiene and Sanitation Strategy* (2005); Federal Democratic Republic of Ethiopia, Ministry of Health, *Health Sector Development Program IV, 2010/11–2014/15*, at 8 (2010).
- 9 See n 3, at 234.
- 10 *Ibid*, at 210.
- 11 Reed Dickerson, *Fundamentals of Legal Drafting* 101 (2nd ed 1986).
- 12 UN Committee On Economic, Social and Cultural Rights, 22nd Session Geneva, 25 April – 12 May 2000, Agenda item 3, General Comment no 14 (2000).
- 13 *Ibid*.

Binita Pandey
 Kathmandu School
 of Law, Kathmandu
 binu_sunu@hotmail.
 com
 Not published

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

The relationship between health and poverty is multi-faceted and bi-directional.¹ Health status trends in a country have always paralleled with the patterns of poverty over the centuries. The World Health Organization (WHO), in the Commission on Macroeconomics and Health, stated that, in today's world, poor health has particularly pernicious effects on economic development in Sub-Saharan Africa, South Asia, and pockets of high disease and intense poverty elsewhere.² Therefore, extending the coverage of crucial health services to the world's poor could save millions of lives each year, reduce poverty, spur economic development and promote global security.³

Conversely, the causation of poor health deepens poverty as the differential consequence of disease is more catastrophic to the poor than the rich. It is found in the WHO 1999 report that the poor fare worse than the better-off in society on all health indicators. It was found that those living in absolute poverty, compared with those who are not poor, are estimated to have a five times higher probability of death between birth and the age of five, and a 2.5 times higher probability of death between the ages of 15 and 59.⁴ It is mostly found that there is child mortality rate in poor families than non-poor. For instance, in Bolivia, under-five mortality rate is about 30 per 1,000 live births for the richest fifth of the population and 140 per 1,000 births for the poorest fifth.⁵ Likewise, the poor use health services less than the well-off. For instance, in Nepal, differences between the richest and poorest income quintiles in attended delivery, antenatal care, immunisation coverage, malnutrition, total fertility rate and use of modern contraceptives are two

to ten-fold.⁶ Accordingly, the WHO report on Macroeconomics and Health states that countries with the weakest conditions of health have a much harder time achieving sustained growth than the countries with better conditions of health.⁷ In addition, according to Bloom and Sachs, the shortfall of economic growth in Africa relative to the high-growth countries of East Asia could be explained statistically by disease burden, demography and geography, rather than by more traditional variables of macroeconomic policy and political governance.⁸ Thus, the health sector generally has little or no control over many of the 'social determinants of health' and it faces the practical challenge of identifying how, alone and in co-ordination with other sectors, it can most effectively work to interrupt the vicious cycle of poverty-ill health-poverty.⁹

This essay prompts with presenting the inextricable links between poverty and health (ie, it is bi-directional). For every age group and the majority of health indicators, the health of the poor is worse than that of the non-poor. To address this state of inequality and deprivation in health services, studying health in isolation (ie, from a medical perspective) is not sufficient and requires extending efforts towards the social determinants of health. For this, I have reviewed law as a potential macro social factor in the social determinants of health influencing the level and distribution of health of the people. Finally, I have discussed law as a tool for reducing health disparities.

The social determinants of Health

The WHO Commission on the Social Determinants of Health has stated

social determinants and their workings in holistic terms to improve the health inequities between and within countries. There is various research which indicates that preventative interventions targeting behaviour, the environment and socioeconomic factors (including education, economic security, social support and community safety) account for approximately 80 per cent of the reduction in morbidity and mortality, whereas clinical care only accounts for 20 per cent.¹⁰ Likewise, there are some carefully designed programmes that have brought health benefits to the poorest section of people. For example, in Mexico's *Progresa* programme, cash is provided to families if their children are enrolled in school and they regularly visit a clinic. Numerous evaluations show that the programme has increased school enrollment and improved children's health.¹¹ In South Africa, there is implementation of the Children's Budget Unit, which focuses on the principle of progressive realisation of rights and whether this is being done for the poorest using the maximum available resources. It has been able to properly advocate for children orphaned through AIDS, who lack parental, legal or financial support and improved the overall status of children.¹² It is, therefore, important to understand the complex array of factors that are intrinsically linked with poverty and make up the 'social determinant of health (SDH)' as well what affects the health of people, from disease, to life expectancy, to medicine. It is thus important for governments to establish an integrated policy framework to assess the health needs of people and identify the effective interventions needed.

Law as a macro social factor in social determinants of health

Public health law scholar Professor Scott Burris has described 'two important ways that law interacts with social determinants of health':¹³

- Law helps structure and perpetuate the social conditions i.e. "social determinants"; and
- It acts as a mechanism or mediator through which social structures are transformed into levels and distributions of health.'

The role of law on improving public health is shown in the article of Komro, O'Mara and Wagenaar. The article has figuratively exemplified in the chart below the effects

of law on the full range of institutions, organisations and other structures in society, and the resulting characteristics and actions of those organisations and structures affecting the economic, social and physical environments that the population experience, thereby influencing exposures to risks or protections of individuals ultimately affecting the aggregate levels of population health.¹⁴ The chart is summarised as:



Fig 1: Casual diagram showing a public health perspective on how law affects population health

Meanwhile, in modern development of human rights, the obligation of the state towards the health of the people is not merely seen as the state obligation but also a 'human right' of the people. The law recognising the right to health of the poor calls for a paradigm shift in how we see and address poverty in mainly three ways:¹⁵

- (i) it shifts the view of poverty as an inevitable tragedy to an intolerable injustice;
- (ii) it shifts the view of poverty from a vision based on charity to one based on obligations and responsibilities; and
- (iii) it shifts the view of poverty from viewing people as objects of development to viewing people as subjects of human rights.

General comment 14 on right to health sets out the framework for the systematic exploration of the barriers to health through the availability, accessibility, acceptability and quality (AAAQ) model.¹⁶ Importantly, there are a number of international conventions, regional instruments and national laws providing guarantees and legal frameworks for the elaboration of health-related policies, programmes and services in this model. Consequently, in the AAAQ model, the governments are obliged to make legislations and policies that will help to respect, protect and fulfil the right to health. In this essay, in order to study the influence of law on the health of poor, referring to Wiley in the article, 'Health law as social justice', I have discussed law as a tool for reducing disparities.

Ensuring access to affordable, high-quality healthcare

Universal access to justice has been a buzzword in the international arena working for health. The laws define the rights to health of people and provide protections to indigent people through regulations and implement free healthcare policies and programmes as a matter of entitlement for the poor to afford and access health services. Accordingly, various research shows an attempt has been made by various governments to support free or subsidised health services and to improve health conditions among poor and vulnerable people as part of a country-wide strategy to reduce poverty.¹⁷ In Europe during nineteenth century, legal and administrative infrastructure was developed for regulating food safety, building codes, social welfare and water bureaus¹⁸ which improved the quality of health of people.

On the other hand, if the laws restrict people's access to health services, for example requiring third-party authorisation for services or criminalising certain consensual sexual behaviour, studies have shown it excludes a number of vulnerable people from health information and services they need, as the people suffering from those problems hide it from health workers and others, for fear of being stigmatised, arrested and prosecuted¹⁹.

Encouraging healthy behaviour choices

Changing behaviour has become crucial in controlling communicable diseases like HIV and other unhealthy behaviours of people such as teen violence and drunk driving.²⁰ Using tools of economics and marketing, the government authorities have begun to develop programmes to influence individual behaviour choices by changing the prevailing social norms in society.²¹ For this, law is used to reduce unsafe behaviour by both direct (eg, helmet laws for motorcyclists and drunk driving laws) and indirect (eg, taxes and subsidies) means, the goals of which are to make healthier behaviour less costly and unhealthy behaviour more expensive.²² This has changed the unhealthy behaviour of people and improved health in society.

Creating healthier communities

Poor people experience vulnerability related to their caste, ethnicity, religion, gender identity, etc in addition to poverty-linked constraints to enjoy their right to health. The 'socio-ecological' model of public health points to various strategies for facilitating healthier living through changes to our neighbourhoods, schools, workplaces and marketplaces.²³ In such conditions, laws affects populations' health by directly influencing social conditions within a society, including power dynamics, social stratification, inclusion or exclusion of specific subpopulations, and formal social controls.²⁴ Laws promoting the involvement of community members in designing health programmes and policies is likely to benefit the health of the poor. For instance, in India and Ghana, the mobilisation of the community in the health sector, providing training for community-based health workers, the involvement of traditional leaders and local delivery services has achieved dramatic results, recognising existing health resources to meet the needs of poor clients²⁵ and developed the confidence of society in the health reform programme.

Conclusion

There exist visible discrepancies on the enjoyment of right to health by poor and rich people within and between countries. It is urgent to address this disparity. Furthermore, the traditional approach of the 'medical model' that countries used to address the problem of health of people has been transformed into the 'social model' to address social determinants of health (SDH). Among these SDH, law is a macro level intervention of the government to bring the desired changes on individual and national level health outcomes. While taking law as a tool to address the disparity on health, it is observed that the legal powers, duties and restraints structure the mission of public health agencies and shape their function, influence social institutions and environments by creating or reducing opportunities, increase or decrease available resources, expand or reduce rights and obligations, and create incentives and penalties which may result in intended and unintended effects, both positive and negative, on people and the country. Thus, governments are required to carefully design comprehensive legal

policies examining possible interventions and influences on the health of people in general and the poor in particular.

The donor supporting Binita Pandey's scholarship at Kathmandu School of Law is the Law Council of Australia.

Notes

- 1 Ursula Grant, 'Health and Poverty Linkages: Perspectives of the chronologically poor' (DFID Health Systems Resource Center, 2005) p 4.
- 2 World Health Organization (WHO), 'Macroeconomics and Health: Investing in Health for Economic Development', (2001) p 24, available at www1.worldbank.org/publicsector/pe/PEAMMarch2005/CMHRReport.pdf
- 3 *Ibid.*
- 4 World Health Organization (WHO), 'Making a difference' (1999) p 19, available at www.who.int/whr/1999/en/whr99_en.pdf.
- 5 MS Devarajan and R Reinikka, 'Making services work for Poor People: the poor need more control over essential services' (2003) p 1, available at www.imf.org/external/pubs/ft/fandd/2003/09/pdf/devaraja.pdf.
- 6 KP Rosyara, U Acharya & PK Khadka, 'Effectiveness of health insurance and its impact on rural health development' (2006), *Journal of Institute of Medicine*, 7.
- 7 World Health Organization (WHO), 'Macroeconomics and Health' (2002) p 1.
- 8 Institute of Medicine (US) Committee on the US Commitment to Global Health, *The US Commitment to Global Health: Recommendations for the Public and Private Sectors* (National Academic Press 2009) 7, available at www.ncbi.nlm.nih.gov/books/NBK23790.
- 9 Paula Braveman and Sofia Gruskin, *Poverty, equity, human rights and health* (World Health Organization 2003) p 539, available at www.who.int/bulletin/volumes/81/7/Braveman0703.pdf.
- 10 LO Gostin, et al, 'Restoring health to health reform: integrating medicine and public health to advance the population's well-being' (2011), 159(6), *University of Pennsylvania Law Review*, pp 1777-1823, available at www.jstor.org/stable/41307988.
- 11 World Health Organization, *Human Rights, Health and Poverty Reduction Strategies*, (World Health Organization 2008) p 38.
- 12 *Ibid.*, at p 57.
- 13 Scott Burris et al, 'Integrating Law and Social Epidemiology' (2002) 30 *JL Med & Ethics*, p 510.
- 14 KA Komro, RJ O'Mara and AC Wagenaar, *Mechanisms of Legal Effect: Perspectives from Public Health* (2012), pp 6-8.
- 15 Center for Economic and Social Rights (CESR), 'Human Rights and Poverty: Is poverty a violation of human rights?' *Human Rights Insight No 1 – Draft for comments*, 2, available at www.cesr.org/downloads/CESR%20Briefing%20-%20Human%20Rights%20and%20Poverty%20-%20Draft%20December%202009.pdf.
- 16 World Health Organization (WHO), 'Right to health', factsheet no 31, p 4, available at www.who.int/hhr/activities/Right_to_Health_factsheet31.pdf.
- 17 Population reference bureaus, 'Improving the Health of the World's Poorest People', 2004, p 3, available at www.prb.org/pdf04/improvingtheHealthbrief_Eng.pdf.
- 18 LO Gostin, S Burris and Z Lazzarini, 'The law and the public health: A Study of infectious disease law in the United States' (1999), *Columbia Law Review*.
- 19 World Health Organization (WHO), 'Sexual health, human rights and the law', (2015) p 1, available at http://apps.who.int/iris/bitstream/10665/175556/1/9789241564984_eng.pdf.
- 20 See n 18 above.
- 21 LO Gostin, 'Public Health System Core Functions and the law', available at <http://academic.udayton.edu/health/syllabi/Bioterrorism/4PHealthLaw/PHLaw04.htm>.
- 22 *Ibid.*
- 23 Lindsay F Wiley, 'Health as Social Justice', 24 *Cornell Journal of Law and Public Policy*, p 80.
- 24 See n 14 above at p 8.
- 25 Population reference bureaus, (n17) 3.

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Tsebaot Getahun Kiflu
 Mekelle University,
 Mekelle
 tsepipi@gmail.com
 Not published

At least once in our lives, we all may have experienced a sudden urge for food or thirst for drink that could be quenched after a few steps towards a refrigerator. Or, perhaps may have once been a college kid with a maxed-out credit card, stuck in debilitating anguish, waiting for

the transfer of money from a parent's bank account. In both cases, there seems to be an almost automatic solution at hand. But, suppose the hunger and thirst subsists and it requires more than a daring effort to be fulfilled, or suppose the awaited money never materialises. That state of misery and torment

for a very long period of time is what it feels like to be in poverty and ultimately what it feels like to have poor economic status. In the simplest of terms, poverty amounts to the experience of being broke; except it's with more intensity and for a much longer time.

According to the World Health Organization (WHO), poverty is defined in absolute terms as earning a low income – less than US\$2 per day.¹ A country is thus presumed to be categorised as having a poor economic status if it fulfils the elements described in the Human Poverty Index (HPI). According to the illustration of the HPI, there are three elements for considering a given country as a developing one:

1. the first element is longevity, which is defined as the probability of not surviving to the age of 40;
2. the second element is knowledge, which is assessed by looking at the adult literacy rate; and
3. the third element is to have a decent standard of living. Failure to achieve this is identified by the percentage of the population not using an improved water resource, and the percentage of children under-weight for their age. Both indicate being deprived of a decent standard of living.²

As such, Ethiopia falls in to this frame of assumption. Although it appears necessary to go by the book so as to determine the current status of the country, it seems easy to label it as such by simply taking a glimpse at the living standard of the people. What it means to be poor is a well understood phenomenon in this section of the world, that perhaps many could build a solid career out of it by simply giving lectures on this specific subject matter!

Being poor has its spiteful consequences, some more severe than others. Among the impacts it drags upon an individual, the first and foremost is that it prevents that person from fulfilling the basic human needs for the sustainment of life. As the list goes on, it hampers, if not makes it impossible, to enjoy full health, education and prosperity in life. Furthermore, as Aristotle has said: 'Poverty is the parent of revolution and crime.' Poverty causes a deeper level of frustration than any other circumstance, for it fuels an individual to rebel against an existing system so as to find a rescue from such misery. So, as to end the bondage of poverty, it's quite common to witness individuals entering into a lifestyle born out of desperation. This newly born lifestyle constitutes a mentality

that approves crime as the ultimate resort. With this mentality at their disposal, the individual enters a cycle that continues and develops into a set of guidelines for life. As the followers of these guidelines increase, it develops into a culture that strengthens its root as it passes to the new generation. As such, the effect of poverty has these chains of consequences that make it perpetuate for a long time. This is because the so developed culture takes a form of rigid corrupt characteristics at a national level which then becomes an agenda to tackle. Of course, by then, it would be merely superfluous to expect economic development within said corrupt nation. The consequences do not end here; it further creates the migration of people to other parts of the world. The migrating people are usually the young and working section of the population in search of a better alternative. With this working force of the country being exiled away, the country escalates into an economical jeopardy in need of immediate attention.

Of all the consequences, the impact poverty has on health is highly detrimental, for it contributes much to low life expectancy, high infant mortality rate, malnutrition, etc, facilitating the rate of infection by various diseases. So, poverty stretches its dimensions more than just making life a living hell, it also has ways to become a ground for taking away lives altogether. In addition, living in poverty also results in low literacy rates. This means where ignorance is the prevailing way of approaching things, it doubles the impact by stagnating the level of awareness only to the privileged few. To this end, poverty becomes an equation with too many variables.

Ethiopia, being one of the developing countries that have yet the long road of development to march ahead, the circumstances that shackle the overall welfare of the society is real in every sense of the word. Generally speaking, in a country with poor economic development, the very basic essentials that are the foundations for the formulation of a welfare society are either being misused or inadequately being used. As such, every potential sector that is a component of the entirety of the welfare system needs to be worked upon in order to see some tangible changes that enhance the capacity and quality of each area concerned. Among these potential sectors that may have a big return if invested upon could be areas like the health and education sectors.

To minimise the adverse effects of poor

economic status, Ethiopia was one of the 189 member states who adopted the Millennium Development Goals (MDGs) in 2010 to reach the eight goals by 2015. The MDGs contained within them a vision of inclusive development that expands the choices of all people in segments of society, and prioritises the elimination of structural, institutional and cultural obstacles to participation in development. It provides a roadmap and vision of a world free from poverty and hunger, with universal education, better health, environmental sustainability, freedom, justice and equality for all.³

Singling out the health sector in relation to prevailing poor economic status, the contribution of the status quo is crystal clear. The poorer the economic development of a country, the worse off any component sector of a welfare system is, be it health or any other. As Kofi Annan rightly expressed: ‘The biggest enemy of health in the developing world is poverty.’ This is mainly true because poverty creates a profound resentment in the lives of people which forces them to succumb to things that they normally would not have even considered. So it’s not in vain that some say ‘desperate times call for desperate measures’; it’s rather because in that state of vulnerability, it would be much easier to resort to tempting shortcuts. Among the shortcuts people take, some people may end up eating out of a rotten trash-can, risking infection by deadly bacteria, while some may end up working as prostitutes with higher probability of carrying the HIV virus. Hence, the claws of poverty are so malicious that it sucks out the dignity of humankind to nonexistence!

However, this overwhelming enemy of humankind can be overcome by enhancing the economic status of a country. By so enhancing, it would be apt to expect a better and well-established welfare system as well. The link between healthcare performance and the economy should therefore not be underestimated. With better economic strength, a nation can attain the following objectives in relation to its healthcare system:

- better provision of a quality healthcare system with sufficient geographical coverage;
- better access to clean water and environment, education and decent living standards; and
- better financial empowerment of citizens, giving them the ability to choose what is best for their health.

Thus, with better economic development,

it would be possible to progress until the eradication of poverty is complete. However, in the journey of progress to the attainment of the objectives, it does not necessarily mean there would be no gaps that may falter the strategy for betterment. The gaps may materialise in different forms; some may appear during the implementation phase, while others may substantiate in other forms. At this juncture, the role of law comes into the picture, filling these gaps and shielding areas of concern that facilitate such progress.

How does the law play its role in the improvement of the economy and healthcare system?

The law is the basis for establishing, organizing and managing all functions of society. No organ, institution or other entity can be created, financed or maintained by the state unless the constitution or law authorises that body’s creation, as a result asserting its own significant effect which necessitates an immediate compliance to its stipulations. This, however, could only hold true if there is the principle of the rule of law in that particular state. In the absence of this principle, it would be merely futile to expect that the law has any role to play in the overall advancement of the economy. This is because the existence of the rule of law ensures that any stipulation is legislated to have immediate compliance within society.

This being said, the first and prominent role that the law could play for advancing the economy is by making sure that the enactment of the laws are economically sound as well as implemented. This means that there should be strict application of the provisions of the law, particularly of those which facilitate economic progress. Private laws like contract law and tort law, for instance, play a huge part in being an adequate lubricant to business. In fact, without the existence of these laws, any business person with the potential to invest in any sector of the economy (potentially the health sector) would be too sceptical and hesitant to risk his assets for fear that there is no guarantee for a safe, fair and smooth business transaction. Hence, the law, by becoming a trustworthy bridge between individuals, makes sure the entrepreneurial venture is conducted virtuously.

Secondly, the law yet again plays a decisive role for the whole creation, development and sustenance of the economy through

ensuring peace and order. This objective can be attained by the public laws such as constitutional law and criminal law. Of all the attributes of the law, perhaps this could be recognised as the most fundamental one because, through the history of humankind, a lot has been sacrificed for attaining one of the most precious element of a civilised world: peace and order. While constitutional law adheres to maintain order through the mechanism of the principle of the rule of law, and by giving a structural as well as functional separation of power to the respective organs which ultimately give birth to the notion of a government, criminal law strives to regulate the behaviour of the public by taking deterring measures which, by their nature, are destructive to the wellbeing of the people. Therefore, the law, by creating the needed stability within a country, becomes a means of attraction for potential investors as well as making sure that there exists a smooth transaction.

Thirdly, as ones development objective could take the form of national policies that are to be enacted by states and therewith implemented, the state would have to use one of its means to communicate and impose its plan to the people through enacted rules and regulations. Therefore, the state, by using its legislative mechanisms that have the capability to implement policies and programmes without much delay, may create legitimate institutions that have as their sole mission an economic facilitating aspect. For instance, according to sources, health in Ethiopia has improved markedly in the last decade, with government leadership playing a key role in mobilising resources and ensuring that they are used effectively. Ethiopia has demonstrated that low-income countries can achieve improvements in health and access to services if policies, programmes and strategies are underpinned by ingenuity, innovativeness, political will and sustained commitment at all levels. An example is the development and rapid implementation of the Ethiopian Health Extension Program.⁴ The law, therefore, could be used as a means to an end. As such, it could help in making strategies and policies that have been formulated by the respective experts to have an uncompromising effect. Which otherwise would make a pretty good constituent to the general pile of unbinding drafts, it now has the automatic effect to have a critical influence on the working of the system. Therefore, among other mechanisms that

the law could be of use, one of its prominent roles is legitimising such things to have the needed effect at the needed time. To this end, the policies, strategies and other programmes which have as their primary objective the overall development of the country would be redeemed from unnecessary delay that may encumber them from attaining an effective result.

Fourthly, in addition to the fact that the law can help much in the achievement of the overall economic advancement of a nation, it can further make a particular impact over the health sector alone. Through its legislative organ, the state may create a favourable instance whereby this area of concern could get extra support through subsidies, exempted or lower tax rates etc, for the creation of a well-developed and established healthcare system. Moreover, the law could help make a difference by encouraging and giving recognition to proficient medical practitioners, maintaining strict assessment of entry exams for medical students, and creating a regulation pro-medical care system resulting in better investment towards it.

At the very heart of the law is the priority given to the people who are to be protected and secured by the stipulated provisions that enshrine their collective will. As such, placing a high emphasis on the health sector seems to complement the crucial aspect of the law, which is the very lives of the people. Consequently, supporting this concerned area in a way gives a practical stimulation to the spirit of the law which adheres to the intensive well-being of the society. Therefore, the action taken by the state for health-related issues will do much to exemplify and give life to the words of the law.

Moreover, contrary to the previously-mentioned role of the law, instead of encouragement, the law could further regulate the code of conduct of practitioners by adhering to a strictly punitive measure that highly discourages any activity of the practitioner which inclines to abuse or negligence. This is supposed to make the service more attentive to the demands of the patients and not take anything lightly.

Another way that the law can make its contributions is by enforcing the empowerment of women through policies such as affirmative action and by creating awareness around issues such as female genital mutilation (FGM) so as to criminalise related harmful traditional practices that have scientifically been proven to be detrimental

to health in general. And so, by empowering women, it would ultimately be possible to create a huge impact. This is because, in most cases, women are the care-givers who look after the wellbeing of the entire family. To this effect, it would only take one to imagine how humongous the change would be if such empowerment takes place on a large scale.

The law could further play its role by actively creating legitimate institutions that take protective measures for water and pasture lands from contamination. This proactive role of the law accomplishes two missions at once. The first one relates to the fact that, by solely protecting water and pasture lands from contamination, the law makes sure the existence of a healthy environment that in turn avoids all causes of catching a disease caused by an unhealthy atmosphere. Second, by ensuring such protection, it could be said that it avoids additional costs that would have been incurred. And, as such, it may contribute to the economy by conserving these precious resources diligently.

To summarise, the law can enhance the economy of a society which in effect would imply a better healthcare system. Nevertheless, it must be kept in mind that

there are other attributing factors that cannot directly be addressed by the law to have an immediate effect. With this consideration in mind, it can be said that the law can ensure, in all the areas it touches, the eradication of social mishaps to a great extent. As a result, it would be possible to empty the contents of poverty and poor economic progress so as to benchmark the fate of Ethiopia with one of the most prosperous. After all, the future is ours to change so long as we make sure today that we work on our blueprint, which is found in the form of laws and legislations, to create a better tomorrow.

The sponsor supporting Tebaot Getahun Kiflu's award is Linklaters (www.linklaters.com)

Notes

- 1 See www.who.int/topics/poverty/en accessed 28 December 2015.
- 2 See www.economicsonline.co.uk/Global_economics/Poverty.html accessed 28 December 2015.
- 3 See www.et.one.un.org/index.php?option=com_content&view=article&id=14Itemid=488 accessed 26 December 2015.
- 4 See http://en.m.wikipedia.org/wiki/health_in_Ethiopia accessed 23 December 2015.

How does poor economic development contribute to health-related concerns; and how can the law control these concerns and improve lives?

Merga Fikadu Angerasa
 Addis Ababa University, Addis Ababa
 mergafikadu@gmail.com
 Not published

Poverty snatched away my wife from me. When she got sick, I tried my best to cure her with *tebel* [holy water] and *woukabi* [spirits], for these were the only things a poor person could afford. However, God took her away. My son, too, was killed by malaria. Now I am alone.¹ An old man from Africa said.

Before dealing with the link between poor economic development (hereinafter poverty)

and health-related concerns, it is worth knowing what poverty is. Much research categorises poverty as absolute and relative poverty. Absolute poverty reflects the state of having limited resources to fulfil basic needs like food, shelter, clothing, basic health or education. A person who has limited resources to fulfil these needs is poor in absolute terms. On the other hand, relative

poverty would identify poor households as those whose income falls significantly below the average level of income in the economy. In developed countries, this approach is the best approach to identify who is poor.²

We may not always think of poverty as a health issue, but a substantial and growing body of evidence confirms a link between poverty and health problems;³ poor persons both in absolute and relative terms are more vulnerable to health problems than the richer persons. In addition, among the eight millennium development goals taken to be achieved in 2015, three of them are those which are directly related to the issue of health.⁴ This shows a clear linkage between poverty and health issues.

The relation between poverty and that of health concerns can be seen at two levels: 'individual' and 'population'. The former shows the way in which a direct personal poverty experience affects the health status of such individual, while the latter shows how living in society within unequal distribution of income affects the health of population.⁵ Further, the health problems caused by poverty are exacerbated when it comes to certain vulnerable groups like children, women, marginalised ethnic groups, persons with disabilities and, in some cases, to refugees. The health-damaging effects of economic poverty are compounded by inequality related to sex, racial or ethnic groups, disability, HIV infection or other factors associated with social position.⁶

Poverty is related, but not limited to, lack of income or having a very low level of income. A person who has no income means has no means of affording the fee to be paid for a health service provided. As a result, the person that would not have died, had he got healthcare, could possibly die or remain sick. A person who has no income means cannot feed himself, which is a necessary thing for a human being to live or it can result in malnutrition which, in turn, causes diseases emanating from deficiency of a balanced diet.

Lack of clean water prevails in countries that have poor economic performance more than in developed countries. These can be attributed to lack of budget or finance needed to set up clean water projects and construct infrastructures. This obliges the citizens of poor countries to use unclean water for drinking and other purposes. The water can be polluted by chemicals discharged from factories and cause diseases. *'If two out of three children become ill and vomit...*

*it is due to the water; even though you can add chlorine, you're never sure what you are drinking.'*⁷

In some countries, fetching water can cause many injuries, especially to women and children, for there is a possibility they will be attacked by dangerous wild animals.⁸ The citizens of poor countries or poor people in rich countries experience lack the use of safe water which protects them from disease.

Environmental pollution is not a case only in poor countries but also in developed and rich countries. However, its immediate impacts are graver in the former case, for the developing countries lack enough finance and structured institutions to manage water polluters. In short, people living in poor countries are more vulnerable to health-related problems resulting from environmental pollution. Because of obvious reasons, the polluted environment affects the health of people in multidirectional aspects.

Poverty can limit the education level of individuals or a society in general and this can affect the health of the society in many ways. Low education levels are linked to unemployment, which affects the income of people and, as mentioned above, low level or lack of income is poverty and this highly affects health. Education also increases overall literacy and understanding of how one can promote one's own health through individual actions.⁹ Poverty leads to a lack of literacy, which results in failure to protect one's own health.

A poor person cannot build a house or afford to buy one. Housing is an absolute necessity for living a healthy life and living in unsafe, unaffordable or insecure housing increases the risk of many health problems. Insecure housing can cause electric or fire accidents, which can surely cause death or permanent disability. People who have no house start to live on the streets which has very risky health concerns. In short, poor-quality housing can be the cause of numerous physical and mental health problems.¹⁰

Women were the victims of past exclusionary systems and, because of this, economically they are poor than men. In most cases, they were employed in jobs of much lower payment, like domestic work. Maternal mortality rates are higher in poor countries than developed ones for there is a lack of healthcare centres to serve pregnant women in many developing countries. Poverty encourages women to prostitution which has significant health implication such as HIV/AIDS. It is of greatest possibility that domestic

women workers are at risk of being raped by their employers.

Children and persons with disability (PWD) are other groups who are victims of poverty-caused health problems.

Regarding the impacts of poverty on the health of populations, studies reveal that there is a reverse relationship between unequal income distribution among society and its health impacts. Unequal income distribution leads to health risks such as smoking, substance abuse and psychological problems.¹¹

Poor economic development negatively affects the health of a given society or individual in society. There is a reverse relation between poor economic developments and health concerns (ie, increase in poverty leads to worse health conditions). In other words, the wealthier you are, the healthier you are, or the poorer economically you are, the poorer in your health. Unequal distribution among society also has a negative effect on the general health or welfare of a society. Women, children and PWD are groups which are severely affected by health problems caused by poor economic developments. Further, the general economic policy of a given country has a multifarious impact on the health of its citizens.

How can laws solve the problems and improve life?

In the preceding pages, we have seen that poverty affects the health of a given society and individuals. Law as an instrument of regulation of the behaviour of society can directly or indirectly reduce poverty and reduce health problems. Related laws include but are not limited to human rights law, environmental law, tax law, labour law, property law, family law and law of succession.

The human right to health is an internationally recognised right. Realisation of the right to health needs the formulation of health policies and the adoption of specific legal instruments. In addition, the implementation of this right also needs the enforcement and protection of other rights, such as rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, and safe and potable water. The 'highest attainable standard of health' is a right recognised under many international instruments and the States Parties to these

instruments has an obligation to respect and protect this right. These obligations includes the guaranteeing of the accessibility of a qualified, affordable health service without any discrimination. By obliging the States Parties to the conventions to respect and protect to the extent of their available resources, the human right to health can improve both health quality and reduce poverty.¹²

The tax policy of a given country in general and the income tax law in particular has paramount implications on the wealth of the peoples and on their health. The progressive income, a tax where lower-income persons pay a lower tax rate of their income than higher-income persons, can relieve the people of lower income from payment of tax and, hence, save them from chronic poverty levels. In addition, the system by distributing different tax rates among the people of different income levels can to a certain amount reduce the unequal distribution of income which, as mentioned above, has a negative impact on the health of citizens. On the other hand, progressive and proportional income tax systems are against poor people's income and health. In the former case, peoples of lower income will pay higher rates of tax as compared to peoples of higher income, while proportional tax imposes the same rate of tax to all people of varying income levels. Progressive income tax can favour poor individuals so that they can be protected from chronic poverty levels on one hand and it to some extent balances income distribution which, in turn, improves the health of society. By doing so, tax law of both developed and developing countries improves the life conditions and then improves the health of society.

The labour law and the laws of social security of a given country can affect the income of its citizens and then promote poverty which, in turns, affects the health of its people. Labour law not only affects the income of workers but also directly relates to the health of the worker, for instance, a safe working environment is directly related with health of the workers. In most circumstances, large enough wage increments lead to a rise in the income of poor people, which consequentially lifts them out of poverty. In the case of informal sectors such as domestic servants and daily workers, as discussed above, the rate of health problems are high, hence well-articulated and inclusive employment law can effectively protect the health of these

workers. Employment law can provide grants of hardship allowance for workers working in hard climate conditions for protection of their health as well. Employment and social security law also grants the workers pension payments for retired workers who, in most cases, are the victims of poverty and health problems. Pro-worker employment law protects workers from possible health problems happening in the work place and it protects them from loss of their jobs which throws them into deep poverty.

Environmental issues have a direct implication on the health of a society. In both developed and developing poor countries, people are the victims of health problems associated with environmental concerns such as air pollution, water pollution, climate change, land degradation and diminishing supply of clean water. Both international and national environmental law obliges the state and any other organ that contributes to the pollution of the environment to reduce it or encourages them to work on it as a corporate social responsibility. Further, environmental law controls possible environmental pollution by imposing Environmental Impact Assessments (EIAs) on each industry or investment to be established. As such, environmental law can contribute to the reduction of health problems caused by environmental pollution, effects of which are highly dangerous for poor people and poor countries.

Family, succession, property, human rights and criminal law should be enacted in a manner which enables women and PWD equal access to property and bans the traditional practices which negatively affect their health. For instance, criminal law should be able to criminalise FGM and other practices. Family, succession and property law should guarantee equality between men and women or between spouses regarding inheritance property and common property.

In addition to what is mentioned above, human right law plays a very pivotal role in the improvement of health of the international society and economic development, as well imposing different obligations on the state and its people. Access to justice systems are a human right of peoples and lack of respect for this right can throw people in to chronic poverty, especially poor, vulnerable groups such as women and PWD. Thus, respecting this right reduces

poverty and provides a genuine development opportunity for the most socially and economically marginalised groups. Further international human rights promote equality, empowerment of women, protection of the rights of PWD and this can alleviate them from both poverty and health problems.

To conclude, poor economic development results in poor health conditions and the law can improve poor health conditions directly or indirectly. Well-articulated and pro-poor legal instruments can reduce the poverty and improve health conditions, and there are also laws which directly reduce health problems such as environmental law and the health policy of a country.

The sponsor supporting Merga Fekdu Angerasa's award is Travers Smith (www.traverssmith.com)

Notes

- 1 World Health Organization, 'Dying for Change: Poor people's experience of health and ill-health' p 15 available at <http://siteresources.worldbank.org/INTPAH/Resources/Publications/Dying-for-Change/dyifull2.pdf> accessed 18 November 2015.
- 2 Nontembeko Poswa, 2008, 'Characteristics of Households Living in Poverty', Strategic Development Information and GIS Department City of Cape Town, p 4.
- 3 Ontario Women's Health Network, 'poverty and health e-bulletin' p 10 available at http://owhn.on.ca/pdfs/poverty_e_bulletin.pdf.
- 4 These goals are: the reduction of infant mortality rate, maternal mortality rate and diseases like HIV/AIDS and Malaria.
- 5 Shelley Phipps, (2003) 'The Impact of Poverty on Health', Canadian Institute for Health Information, Canada, Ottawa, p III.
- 6 Paula Braveman & Sofia Gruskin, (2003) 'Poverty, Equity, Human Rights and Health', Bulletin of the World Health Organization p 539.
- 7 See n 1 at p 7.
- 8 *Ibid.*
- 9 Juha Mikkonen and Dennis Raphael, (2010), 'Social Determinants of Health', The Canadian Facts, p 16 available at www.thecanadianfacts.org accessed 18 October 2015.
- 10 Royal College of Nursing Policy and International 2012, Health inequalities and the social determinants of health, department p 6, www.rcn.org.uk/__data/assets/pdf_file/0007/438838/01.12_Health_inequalities_and_the_social_determinants_of_health.pdf accessed 18 November 2015.
- 11 See n 5 above.
- 12 Office of the High Commissioner For Human Rights, CESCR General Comment No. 14: The right to the highest attainable standard of health (art 12), adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights on 11 August 2000. Available at www.ohchr.org/Documents/Issues/Women/WRGS/Health/GC14.pdf accessed 27 December 2015.